Williams Litho Service, Inc. *and* Graphic Arts International Union, Local 505, AFL-CIO-CLC. Cases 14-CA-13782 and 14-RC-9124

March 10, 1982

DECISION, ORDER, AND DIRECTION OF SECOND ELECTION

BY MEMBERS JENKINS, ZIMMERMAN, AND HUNTER

On June 30, 1981, Administrative Law Judge Robert G. Romano issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, the General Counsel filed cross-exceptions and a supporting brief, and Respondent filed a reply brief to the General Counsel's exceptions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs[1] and has decided to affirm the rulings, findings,[2] and conclusions of the Administrative Law Judge only to the extent consistent herewith.

The Administrative Law Judge found that Respondent violated Section 8(a)(1) of the Act by, on March 17, 1980,[3] announcing an overly broad no-solicitation and no-distribution rule. We find Respondent's exceptions to this finding without merit.[4] The Administrative Law Judge further found that Respondent violated Section 8(a)(1) by, on March 7, granting its employees increased benefits and improved working conditions as a "calculated" action to interfere with the Union's embryonic organizational effort. For the reasons stated below, we do not agree.

The operative facts regarding the alleged grant of benefits are fully set forth in the Administrative Law Judge's Decision. In summary, the record reveals that the Union held an initial information meeting for Respondent's employees on March 3. Thereafter, on March 7, Williams, Respondent's president and owner, held a meeting with all employees in the plant. The Administrative Law Judge found, and we agree, that Williams' action in calling and holding this meeting was both consistent with his past practice of conducting periodic employee meetings and justified by legitimate business reasons independent of any union considerations. During the course of the meeting, Williams discussed with the employees several of their problems and concerns including, *inter alia*, an employee's discharge, Respondent's profit-sharing plan, and Respondent's health insurance plan. A major concern of employees expressed at this meeting was the large amount of overtime work necessitated by the recent strike, and the manner in which overtime payments were computed. Williams told his employees that he did not want any of them to leave the employ of his company and that, although he favored retaining the current 40-hour workweek with all overtime at time and a half, he would nevertheless allow the employees to choose whether they would prefer a 35-hour workweek plan with overtime computed at time and a half for the first 2 hours and double time thereafter and on weekends.[5] Williams further explained to the employees that the latter plan would include a reduction of the "premium pay" rate from $1 to $.65 per hour.[6] After discussion of the two options, the employees voted by secret ballot. There were 10 votes cast in favor of the 35-hour workweek plan and 6 votes cast to retain the existing plan. Williams then announced that the new plan would be effective the following Monday, March 10.

Based upon the foregoing facts, the Administrative Law Judge found that, although the meeting itself was lawful, the offer and grant of the modified workweek and overtime plan "was an action reasonably calculated . . . to weaken or forestall, if not eliminate any vestige of the embryonic organizational effort" by the Union, and therefore violated Section 8(a)(1) of the Act. We disagree. Rather, we find that the same legitimate business considerations which justified holding the employee meeting to discuss employees' concerns similarly justi-

[1] Respondent has requested oral argument. This request is hereby denied as the record, the exceptions, and the briefs adequately present the issues and the positions of the parties.

[2] Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

[3] Unless otherwise noted, all dates are 1980.

[4] The Administrative Law Judge cited *Essex International, Inc.*, 211 NLRB 749 (1976), as precedent for finding Respondent's no-solicitation and no-distribution rule violative of the Act. We note that *Essex International* was overruled in *TRW Bearing Division, A Division of TRW, Inc.*, 257 NLRB 442 (1981), to the extent inconsistent therewith. However, we find that Respondent's rule is unlawful under either decision. Member Hunter agrees with the finding of a violation but does so solely because the rule at issue is unlawful under the standard established by the Board in *Essex, supra*.

[5] The 35-hour workweek plan essentially was the same as that provided in the collective-bargaining agreement between the Union and the multiemployer association representing unionized printing establishments in the St. Louis vicinity. We note in this regard that Respondent's practice was to pay its employees at least "union scale" and to provide approximately equivalent fringe benefits.

[6] This premium pay was applicable to certain employees classified as "journeymen." The extra 35 cents per hour under Respondent's then-existing plan was designed to compensate these journeymen for working a 40-hour week, rather than the standard union workweek of 35 hours.

fied Williams' offer and subsequent grant of the modified workweek. While we are mindful that the timing of Williams' offer of a different overtime plan is strongly indicative of an illegal motive, both the meeting itself and the events which transpired at that meeting were fully consistent with Respondent's past practice. Apart from the suspicious timing, there is no evidence of any causal connection between the Union's nascent organizational effort and the employee meeting or any of the subjects discussed in that meeting. As was stated in *Walnut Creek Psychiatric Hospital d/b/a Walnut Creek Hospital,* 208 NLRB 656, 663 (1974): "The Act does not require an employer pending an election to refrain from making economically motivated decisions involving business matters or any changes in working conditions necessary to the continual and orderly operation of its business, absent a promise of benefits conditioned upon rejection of the Union and/or any causal connection between such changes and the rights accorded to employees by the Act. Normal business decisions must continue to be made and frequently are necessary for the efficient operation of an enterprise, even though it occurs during an organizational campaign." In the absence of any evidence providing such a causal connection, we shall dismiss the allegation of the complaint alleging that Respondent's offer and implementation of a reduced workweek violated Section 8(a)(1) of the Act.

To remedy Respondent's unlawful conduct, the Administrative Law Judge recommended that a remedial bargaining order be issued. However, inasmuch as we have found that Respondent did not violate Section 8(a)(1) by its March 7 actions, we find that the extraordinary remedy of a remedial bargaining order is not warranted,[7] and that our utilization of traditional remedies will suffice to ensure a fair election and erase the present effects of Respondent's past misconduct.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Williams Litho Service, Inc., Brentwood, Missouri, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Promulgating an overly broad and unlawful no-solicitation and no-distribution rule, and issuing any contemporaneous threat of discharge for violation thereof, in violation of Section 8(a)(1) of the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their Section 7 rights.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Vacate its orally promulgated, unlawful no-solicitation and no-distribution rule, and rescind its threat to discharge employees for violation thereof.

(b) Post at its shop in Brentwood, Missouri, copies of the attached notice marked "Appendix."[8] Copies of said notice, on forms provided by the Regional Director for Region 14, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 14, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

IT IS FURTHER ORDERED that the complaint be dismissed insofar as it alleges violations of the Act not specifically found herein.

IT IS FURTHER ORDERED that the election in Case 14–RC–9124 be, and it hereby is, set aside, and that this case be remanded to the Regional Director for Region 14 for the purpose of conducting a new election in the appropriate unit at such time as he deems that circumstances permit the free choice of a bargaining representative.

[Direction of Second Election and *Excelsior* footnote omitted from publication.]

[7] In view of our finding that a bargaining order is unwarranted, we find it unnecessary to decide whether the Union had achieved majority status at any time material herein.

[8] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
AN Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

The Act gives employees the following rights:

To engage in self-organization

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To engage in activities together for the purpose of collective bargaining or other mutual aid or protection

To refrain from the exercise of any or all such activities.

WE WILL NOT promulgate an unlawfully broad no-solicitation and no-distribution rule, nor threaten discharge for violations of such rule.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of their Section 7 rights under the Act.

WE WILL vacate our present orally promulgated no-solicitation and no-distribution rule, and rescind the threat of discharge for violation of same.

WILLIAMS LITHO SERVICE, INC.

DECISION

STATEMENT OF THE CASE

ROBERT G. ROMANO, Administrative Law Judge: This case was heard in St. Louis, Missouri, on June 25, 26, and 27, 1980.[1] The original charge in Case 14-CA-13782 was filed on May 6, 1980, by Graphic Arts International Union, Local 505, AFL-CIO-CLC (herein Local 505 or the Union), against Williams Litho Service, Inc. (herein Williams Litho or Respondent or the Employer). The complaint thereon issued on June 3 (as amended June 24), and alleges that Respondent by its president and owner, Roger Williams, on March 7 promised employees a wage increase and more favorable working hours if employees withdrew support from the Union, solicited employee complaints and grievances, and promised its employees increased benefits and improved terms and conditions of employment; on March 10 implemented changes in the hours worked per week, the manner in which overtime was calculated, and other terms and conditions of employment; on March 12 conditioned the granting of promised benefits on employees' withdrawing support from the Union; and on March 17 orally promulgated a rule prohibiting employees from discussing unionization while on Respondent's premises, and from distributing union literature on Respondent's premises under threat of discharge.[2]

Petition in Case 14-RC-9124 was filed on March 7, and a Stipulation for Certification Upon Consent Election was entered into by the parties on March 24, and approved by the Regional Director on March 26. An election was conducted on April 30 among the employees of the Employer in an appropriate collective-bargaining unit.[3] There were five votes cast for the petitioning Union, eight votes were cast against the Union, and there were three challenged ballots. A majority of the valid votes counted plus challenged ballots were not cast for the Union. (The challenged ballots were not determinative of a majority.) Thereafter in due course timely objections to conduct affecting the results of the election (some 20 in number) were filed by the Union on May 6. On June 4, the Regional Director for Region 14 of the National Labor Relations Board issued his "Report on Objections and Recommendations and Order Directing Hearing and Order Consolidating Cases and Notice of Hearing" in Case 14-RC-9124 and Case 14-CA-13782. Therein, of the 20 objections filed by the Union, the Regional Director, upon investigation, concluded and recommended that Objections 4-8, 10-13, 15, and 17-20 be overruled, but determined that Objections 1-3, 9, 14, and 16, and certain "other conduct not specifically alleged in the objections" raised substantial and material questions of fact which could best be resolved by a hearing, which was thereupon recommended; the Union's said objections were subsequently so ordered and processed by Order of the Board dated June 24.[4] The complaint in Case 14-CA-13782 also alleged, and the General Counsel has continued to contend on brief, that the alleged unfair labor practices set forth above are so serious and substantial in character and effect as to warrant the entry of a remedial order requiring Respondent as of March 5 to recognize and bargain with the Union as the exclusive bargaining representative of the employees in the above appropriate unit. Respondent, by answer dated June 13 (and by oral answer amendment at the hearing on June 25), has denied the commission of any unfair labor practices; has denied that it has engaged in conduct warranting the election to be set aside; and, in any event, has contended at the hearing and on brief that grounds clearly have not been established herein sufficient to warrant the bargaining order remedy here proposed and sought by the General Counsel.

Upon the entire record,[5] including my observation of the demeanor of the witnesses, and after due considera-

[1] All dates are in 1980 unless otherwise stated.

[2] Certain *charge* allegations of Sec. 8(a)(3) and (5) were withdrawn on June 3; and certain additional *complaint* allegations of alleged 8(a)(1) interrogations, threats to lay off employees and reduce employee benefits if the employees selected the Union as their collective-bargaining representative, and conditional transfer of an employee to a more desirable work assignment on the employee's rejection of the Union were all dismissed at the hearing on the Employer's unopposed motion for lack of evidence presented in support of same.

[3] The parties agree and I find the following described collective-bargaining unit is appropriate herein:

> All production and maintenance employees employed by the Employer at its Brentwood, Missouri, facility, excluding office clerical and professional employees, guards and supervisors as defined in the Act.

[4] Inasmuch as "other conduct not specifically alleged in the objections" clearly appears of record to be based upon complaint par. 5(j) now dismissed, it is readily apparent that said objection grounds are without merit and they will not be additionally considered herein.

[5] The General Counsel filed a motion to correct the transcript on October 8, joined in by Respondent based upon a stipulation for correction of the record executed by the General Counsel and Respondent on September 30. Although the Charging Party has not entered into the stipulation for correction of the record, it has no objection thereto. Accord-

Continued

tion of the briefs filed by the General Counsel and Respondent on or about September 15, I make the following:

FINDINGS OF FACT

I. JURISDICTION

The Employer, a Missouri corporation, is engaged in the nonretail provision of color separation negatives for the graphic arts trades, and at all material times has maintained its principal office and place of business in Brentwood, Missouri, which is the only facility involved in this proceeding. The complaint alleges and Respondent by answer has admitted that during the year ending April 30 Respondent in the course and conduct of its business operations has caused to be transported and delivered to its Brentwood, Missouri, facility film, chemicals and/or other goods and materials valued in excess of $50,000, of which goods and materials valued in excess of $50,000 were transported and delivered to its facility in Brentwood, Missouri, directly from points located outside the State of Missouri. The complaint alleges, Respondent admits, and I find that Respondent is now and has been at all times material herein an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act; and that Local 505 is and has been at all times material herein a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *Background*

1. The Employer's facilities and admitted management

The Employer's litho shop was founded in 1971, and it was heretofore located in a two-story building with 3,000 square feet on each floor. Roger Lee Williams is president and owner, Larry E. Ross is vice president, and Bill Faust is production manager. All are uncontested supervisors. The shop's first floor encompasses an office area occupied by Faust and two secretaries, a partial proofing area, and essentially two camera and scanner rooms. On the second floor there is a film storage area, six stripping tables (with lights), two contact rooms and other process and proofing (two sinks, dot etching, chromalin transfer) areas, and the offices of Williams and of Ross. The record describes the facilities at one time as being cramped due to business growth, with facilities enlarged by 5,000 square feet by the time of election.

2. The nature of the Employer's business and statement of remaining supervisory issues

Respondent is engaged in the nonretail provision of color separation negatives for the graphic arts trade. The Employer's customers are principally printers and advertising agencies. The nature of the service the Employer provides to its customers is such that job orders must usually be scheduled to be out in 3 days to a week, and thus the Employer normally has no order backlog. Both Williams and Ross are principally, but not exclusively, involved with ongoing sales. Williams will regularly check the status of the jobs in the shop in the morning to get a general idea in regard to a promised date for new orders. In writing up a job order, Williams (or Ross) will write up a job ticket showing: the customer's name, the purchase order number, the present date, the date the customer expects to see proofs, the production instructions as to line screen, the positives and negatives, the way to be scanned, and stripped, and a variety of other special technical instructions. Williams explained that he prefers to leave as little to guesswork as possible. Nonetheless, in one out of three jobs it is impossible to write all the required instructions or desired information on the order sheet. On certain of those occasions Williams may call Production Manager Faust, scanner operator Ralph George, and stripper James Dostal to him for a direct discussion of a particular job. However, normally after an order writeup Williams (or Ross) will just go over the job with Faust, at that time reviewing the current work schedule and promised date. It is thus initially evaluated clearly by management whether the new order can be done by the time Williams (or Ross) has promised the customer. There are also daily production meetings held and a continued schedule check made by Faust with Dostal and George to accomplish that same end. In that regard, the General Counsel and the Union have contended that first-shift stripper Dostal, first-shift scanner operator George, and second-shift scanner operator Allen Meschke are also supervisors; while the Employer contends that Dostal and George are leadmen on the first shift because of their skill and experience, and that Meschke, similarly, is a night-or second-shift leadman.

3. The production unit complement

The Employer actually operates on three shifts. During material times the Employer had employed and paid its 16 production employees on the three shifts as follows:

First Shift

Name	*Job*	*Date of Hire*	*Current pay rate*
Ralph George	Scanner Operator	9/19/77	$13.50
Joe Tocco	4Color Cameraman	4/16/79	12.85
Becki Slessinger	Dot Etcher Apprentice	8/4/78	8.75
Bob Pratt	Dot Etcher Apprentice	1/14/80	3.10
Jim Dostal	Stripper	4/3/78	12.37
Mark Edelman	Stripper	8/11/75	11.47
Wayne Erting	Stripper	10/22/79	11.87
Ed Lohbeck	Stripper	10/10/77	10.87
John Record	Stripper	12/17/79	11.87
Donna Reinheimer	Stripper Apprentice	11/6/78	7.05
Greg Kirby	Contact	10/15/79	8.75

ingly, the joint motion of the General Counsel and Respondent is granted in its entirety except that (a) the stipulation calling for deletion of p. 558, l. 1, is granted only to the extent of deleting the words "not that kind of company," with insertion of the word "cross-examination," so that the line reads "That is cross-examination;" and (b) the desired correction of p. 176, l. 18, is declined, but l. 16 thereon is corrected to read "He can be the judge of what is objection—."

First Shift—Continued

Name	*Job*	*Date of Hire*	*Current pay rate*
Jeanne Farrar	General Worker Second Shift	12/20/79	4.50
Allen Meschke	Scanner Operator	4/11/78	$12.51
Ron Goebel	Black & White Cameraman	7/16/79	11.37
Larry Schaffner	Contact Third Shift	12/3/79	10.87
David (Mel) Rainey	Scanner Operator Appr.	12/4/78	$8.00

Faust is directly responsible for the scheduling of all work and its timely production, and he consequently has a great deal of daily customer contact in regard to the in-house jobs. He is in charge of all of the above production shop employees. Every morning Faust holds a production meeting (averaging 20 minutes), which is attended by both George (in regard to scanner/camera work) and Dostal (in regard to stripper/contact work), and which may or may not be also attended by Williams (and/or Ross). The production status of the work in the shop and the promised delivery dates are thus reviewed and discussed daily also by this group. If a department has become overloaded and it then appears that certain work will not reasonably be accomplished by the scheduled date, Faust will go to Williams, or to Ross, who have initialed their job orders, and report that the particular job or jobs will not be done by the scheduled date without payment of (certain) overtime. Williams and Ross, who know the money in a given job order, will either order the overtime (or as necessary get a further money commitment from the customer before doing so), or otherwise order delivery delayed.

After Williams goes over a new job order initially with Faust, Faust then takes the job ticket to George and goes over the instructions with him. In general, the nature of the copy work to be done will automatically determine how and by whom the same is then initially processed; e.g., whether by scanning machine or by camera. The Employer presently has two scanner machines and a Brown camera regularly used for four-color work and another camera used for making larger blowups, screening positives, and shooting most linework. (In given circumstances one cameraman may efficiently operate both cameras.) Any reproduction work that can be done on the scanner (e.g., copy that is bendable and less than 20 by 24 inches) is made on the scanner. Other copy work goes to the camera. As noted, George is the only day-shift scanner-operator and he will do as much of the scanning work himself as he can during the day with the remainder being left (with scheduled date and instructions on the ticket) for the second and then in turn for the third-shift scanner-operator to complete. George will either keep the other orders requiring camera work until the cameraman reports that he is done with the last job, or he may give out a number of job orders at one time to a cameraman.

After the work is finished by the scanner/cameraman, random proofs are made and the work is thus compared with the original by George and it is either approved, or given to the dot etchers for color correction, or it is done over. Approved film is then sent on to stripping. Involved in preliminary review of the random proofs for adequacy may be George, or (otherwise) the scanner, the cameraman, the dot etchers, or Faust and Williams and Ross. Williams related that it is often that Faust or he (or Ross) will send a proof back to George to correct or redo.[6] Otherwise there is frequent daily contact between Faust and George, though with Faust checking primarily on whether the jobs are getting done in accordance with the production schedule, and with George inquiring of Faust for any required clarification on order instructions. It is uncontested that George spends the great majority of his time in scanning. After proofs are approved (or the color is corrected and then approved) the film is sent on for stripping.

During material times the Employer employed five strippers (including Dostal), one stripper apprentice, and one contact person on the first shift and only one contact person on the second shift. A stripper generally outlines and cuts film images, assembles same, and sends such material on to a contact person who will contact the assemblage to produce the proof. Dostal attends the daily production meetings with Faust and George. He has a schedule to work from and he obtains any (upcoming) job clarification required from Faust at the meeting, or he may do so during the day by using a nearby phone. Stripping work when obtained from Faust is kept in a box near Dostal. A given stripping job may last for 2 hours or for 2 days. When a stripper finishes a job he will go back to Dostal, who normally will routinely[7] give the *next* job on the schedule to the stripper, and Dostal will also then go over the instructions for the job as necessary. (On simple jobs, which account for half of the stripping work, nothing need be discussed at all.) If a stripper has a problem, the stripper will bring it to Dostal, and, if the problem remains, Dostal will bring it to Faust. If Faust does not know some point of inquiry made on the job, Faust will in turn contact Williams or the customer to get it resolved. A stripper will also cut

[6] Williams began the Employer's operation in 1971 as a one-man shop, and he occasionally continues to do production work of all types himself, including dot etching. Williams has testified credibly that he regularly approves 50–60 percent of the color work done, and that he has also marked up proofs for color correction. After a year of employment, Ross was promoted in January 1980 to the position of vice president with responsibilities in sales and personnel. Ross had had prior experience as a manager of a 125-employee plant in the trade that made four-color billboards, and he at that time regularly purchased that firm's four-color separations from Williams. Thus, although Ross is not a cameraman himself, Williams has testified credibly and without contradiction, and I accordingly find, that Ross also was knowledgeable in the area of acceptable quality of four-color separations. Bill Faust was formerly a stripper in the trade when hired by Williams. About the time of an industry strike in August 1979, Faust was made production manager. According to Williams, Faust also can make, and has made, the determination whether a random proof is adequate or not.

[7] According to Williams, the only exception thereto would be the case of a very complex job order recently done well by a stripper; e.g., Erting, who was specifically given the next one because of his recent knowledge of the last one. Williams testified, again without contradiction, that, though he, Ross, and Faust on occasion had similarly directed Dostal in the past, a special assignment of the stripping work was not a regular procedure as all his strippers were good.

and assemble the film parts into desired book or page form.

After the stripper is finished, the stripper brings the cut and assembled parts to the contact person, who takes all of the different leaves of the job and composites them. The contact person then makes the contact of the cut images used to produce the images on raw film. However, if the contact person is busy and the job is a rush job, the stripper will himself make the contact. Otherwise it will be left for the contact person on that same or the next shift. The contact person makes final (composite) proofs for the customer's viewing, which are returned to Dostal (or to the stripper, who first reviews them and then brings them to Dostal), who may review them or proofread with the stripper. Final proofs go on to Faust, and preferentially also to Williams or Ross, before being shipped out (and delivered) by Williams, a driver, or a taxi. According to Williams, Dostal spends 75–85 percent of his workday in production stripping and the rest in attendance at the production meetings, in other contact with Faust, and in going over the job with the other strippers. Employees estimate Dostal's actual production stripping time at 50–60 percent of his workday.

B. *The Evidence*

1. The leadmen—supervisory issues

a. *The contentions*

The General Counsel essentially argues that James Dostal is a supervisor because he is considered to be the foreman by employees in the stripping department, he spends 50 to 60 percent of his time actually doing production and maintenance work, employees have reported to Dostal when they were sick or otherwise unable to report to work at the regularly scheduled time, Dostal has initialed timecards of those employees who failed to use the timeclock, Dostal has a work schedule which varies from other employees, Dostal effectively directs employees in their work throughout the course of the day, he participates in production meetings attended only by management and/or supervisory personnel, he assigns work to employees, he informs employees how he wants work completed and he reviews work as it is completed, he requests employees to work overtime when the workload is heavy or to take vacations when the workload is light, he earns substantially higher wages than other strippers, and he has the authority to recommend the hire of employees as well as having hired employee Larry Schaffner. In contending that Ralph George, a scanner operator, is also a supervisor the General Counsel argues that George was intimately involved in the hiring of employee Joseph Tocco. The General Counsel would rely on the initiation of employment contact through an inquiry of George; the circumstance that George showed Tocco around the camera department and first talked to Tocco for one-half hour about the responsibilities Tocco would have, and George's assertion of having "control of the department"; that Tocco talked to Williams pursuant to the suggestion of George and was then hired; and that Tocco again spoke to George and was told, "Good, as soon as you can get out of there [his prior job] come on, you have a job here." The General Counsel would also rely on circumstances that recently, on June 20, George requested Tocco to work overtime on a weekend; that George explained the requirements of the job to Tocco; that George did not work the weekend, but did call Tocco to discuss the status of the job Tocco was working on; and that, when Tocco inquired whether he should stay and complete all four sets of positives on which he was working, George told Tocco, "Just work your seven hours and finish it up." The General Counsel would also rely on the fact that George participates in daily production meetings attended by Faust, Dostal, Williams, and Ross; that he reviews the work performed by the camera department employees, and informs them how to make corrections in the work; that he receives substantially more in wages per hour than other employees in the camera department; that he initials timecards; and that he has disciplined Tocco by cutting his hours. Finally, the General Counsel in contending that Allen Meschke is a supervisor would rely on (a) the Employer's announcement in February that Meschke was the night supervisor *and* (b) the notice given to employees to the (contended) effect that Meschke should receive the same "support and cooperation" as was to be extended to Ross, then announced as promoted to vice president in charge of sales and personnel. Again the General Counsel would rely on Meschke's initialing of timecards and that he receives substantially more than *night-shift* camera department employees. Essentially, Respondent asks the Board to find that Dostal, George, and Meschke are skilled craftsmen, who, because they are highly skilled and experienced, carry related responsibility for assigning and directing the work of others, but as leadmen, and not with that independent judgment and discretion such as would mark a supervisor. Rather, the Employer contends that these individuals perform certain functions according to predetermined procedures and instructions of superiors in a small and highly integrated operation; and that there was not a scintilla of evidence that they have acted independently in hiring, firing, disciplining, rewarding, or otherwise directing employees. Finally, the Employer argues that, if the General Counsel's contentions prevail, there incredibly will result 6 supervisors for a unit of 13 employees.

b. *The strike in St. Louis*

For ready comprehension and evaluation of the evidence and party contentions on the supervisory-leadmen issue, it is deemed as warranted to be noted at the outset that, in support of new contract demands, Local 505 engaged in a strike against the printing industries of St. Louis between August 3 and December 17, 1979, which strike had a direct and multifaceted effect upon the Employer's business operations. *Inter alia*, it dramatically increased the amount of the short-term service business that the Employer offers to the printing and advertising trade.

In 1979, Wayne Erling and John Record were working as strippers at Beaumont Graphics, a union shop and

an employer covered by a certain contract then existing between the Printing Industries of St. Louis and Local 505. By its terms that contract was to have expired on June 30, 1979. Erting had worked for Beaumont Graphics for the prior 12 years and he had been a member of Local 505 for those same 12 years. Record had also been a union member for over 10 years, though having worked during such period in both union and nonunion shops, and last as a stripper for Beaumont Graphics. Larry Schaffner had been employed at Beaumont Graphics, apparently as a contact employee[8] also, for about 3 years and at Color Associates for 2 years before that; and he had been a member of Local 505 for over 5 years.

On August 3, 1979, a strike by Local 505 in support of its contract demands ensued, *inter alia*, at Beaumont Graphics.[9] The strike would last until December 17, 1979. During the duration of the strike, and for some period thereafter, there was a tremendous amount of work generated for Williams Litho, it then having become one of the few color separation plants that was left still operating and serving the entire city of St. Louis. On August 3, 1979, Erting, Record, and Schaffner went on strike. While there is some conflict as to precisely when, I am satisfied that it was shortly thereafter that Erting, Record, and Schaffner later went to work at Williams Litho initially on a nonpermanent, or temporary, basis. Erting related that he reported to Faust when he first started and recalled Faust as then being the stripping foreman. Erting recalled that he did not have much discussion with Williams at that time as the latter was busy in sales. According to Erting, it was subsequent to his hire that Faust was promoted to coordinator, and it was then that Dostal became the stripping foreman, the position that Faust had previously held. The record does not reveal that there was any announcement of Dostal's becoming a stripping foreman as such. While several employees have herein referred to Faust as being a coordinator, Williams has testified, and I find credibly so, that Faust became the production manager. It is also established of record that Dostal had been the *first* employee ever hired by Williams, though his tenure was broken. Thus, Dostal was initially employed from September 1973 until discharged in April 1977, and last from April 1978 to the present. Dostal had never previously been a member of Local 505.

[8] As described by Schaffner, a contact man receives working film from strippers, and composites it into four separate colors so a proof of the plate can be made from the four pieces of film. (The contact man uses a vacuum frame machine which when pressed a light comes on and exposes working film onto raw film in order to come up with an image.) In proofing, the contact person puts each color down or tones it up in yellow, red, blue, or black until it looks like a printed pressed sheet. After that is produced, it is returned to the stripper, who reviews it and gives it to Dostal, who looks at it and if it is found okay says, "[B]ag it out." If it is not right and the fault is the stripper's (Lohbeck's) he redoes it or if the color is not right it is corrected by others.

[9] The strike was apparently the first general strike in support of contract demands called by the Union in 30 years.

c. *The specific evidence in regard to the status of stripper Jim Dostal*

The General Counsel would appear to rely principally on the testimony of employees Lohbeck, Erting, Record (strippers), and Schaffner (contact) in support of the contention that Dostal is a supervisor.

Lohbeck was initially hired as an apprentice stripper by Williams Litho on October 10, 1977, and he subsequently became a journeyman stripper on October 10, 1979. Lohbeck recalled that he was hired by Williams, who told him at that time that Faust was the foreman of the stripping department, and Lohbeck asserted that Dostal now occupies the same position. Thus, Lohbeck related that Dostal hands out the work assignment, goes over the job as to how it is to be done, and instructs as to what a customer wants; that on occasion Dostal has taken work away from him and given it to another stripper to finish (or to start); that some jobs call for overtime, and as far as he knew Dostal determines who will work the overtime when it is not necessary that all the strippers work overtime; and that Dostal on occasion has told strippers to quit talking and get back to work. According to Lohbeck, Dostal does stripping production work only about half the time; and the remainder of his time is spent going to production meetings, talking to Faust, and going through the work, ensuring that it is all there.

Lohbeck, however, has also readily acknowledged that there are varying degrees of difficulty in the stripping work;[10] that specific directions from the customer are written on the job order; and that many of the customers are advertising agencies that themselves will mark up proofs and frequently come back with desired changes. In these respects Lohbeck has confirmed that on occasions Dostal has told him that Williams, Ross, or Faust wanted the stripping job done a certain way; and Lohbeck has specifically confirmed that Ross, though not a stripper, has told him directly how he wanted a job done. Lohbeck has also acknowledged that some of the Employer's work is repeat work; that strippers generally do have their own ideas as to the best way to do a given job; that they will regularly exchange comments on how best to do a job; and in that respect Lohbeck also has readily acknowledged that Dostal has done a substantial amount of stripping himself, that he is an experienced, good stripper, and that Dostal may thus suggest the way of doing a job to him. Finally, Lohbeck confirmed that Faust, the former stripper foreman, presently an admitted supervisor, does continue to coordinate the activities of both the stripping and camera departments.

Lohbeck has otherwise testified that Dostal sits at a stripping table with a light just as Lohbeck does nearby, that they talk all day, and, significantly, that Dostal has

[10] As described by Lohbeck, a stripper essentially uses an Exacto knife, scissors, and tape. The stripping function can involve both outlining and taping, i.e., placement of cut negatives on a stripping base of (mylar or clear acetate) tape. Stripping action on the negatives may involve cutting images or pieces of type, attendant outlining may involve exclusion of one background and inclusion of a substituted background, and stripping may require an assembly of sequential insertions, e.g., inserting sequences as to a bindery layout so that, when folded down, all of the pages are in proper order.

never disciplined him;[11] and Lohbeck admits that some jobs are rush, and that some of the other strippers are better at outlining than he is. With regard to overtime, Lohbeck has also testified that, though Dostal has asked him if he wanted to work overtime, he has refused Dostal without any incident. Lohbeck also acknowledged that, though Dostal has given overtime work out, he did not know whether Dostal had received his instruction on it from others. Although Lohbeck has also testified that he has entered desired time off (vacation) on a calendar at times kept near Dostal and notified Dostal (when he did so) who has said okay, it is also established of record that Dostal has never refused any such request by any stripper.[12] Lohbeck also related that Dostal as well as Faust and Williams has asked him to take a vacation day when business was slow. However, Lohbeck has confirmed that in the last 3 months Dostal did ask him to take a day off and he refused. In contrast, later that same evening Williams came to him directly and asked him to do so. Lohbeck did then take the day off as he has never refused Williams. In regard to a sick leave request he would call in to either Dostal or Faust.

Erting recalled going to work at Williams Litho initially on August 9, 1979, while Record recalled it as being in early September 1979, and that a friend in the trade had informed Erting that Williams Litho was looking for two strippers. According to Record, Erting had thereupon contacted Roger Williams on their behalf, and Erting and he were subsequently hired as temporary strippers. Record, however, had previously notified the Union that he was going to go to work for Williams Litho. Record related that at the time the Union stated its preference was that Record not do so, but then said it was okay if he did. During the period of the strike, Record continued to perform picket duty at Beaumont Graphics whenever assigned, a condition of which Williams was aware.

Although Erting related that he was initially hired part time, he also confirmed that he regularly worked 40 hours (at straight time), and almost all of that time he worked overtime. Erting related that he found he liked the job and the people. According to Erting, he later spoke to Dostal about becoming a permanent employee on numerous occasions. He related that Dostal had said to him, "Well, if you would really like to work here, I would like to have you work here"; and that Dostal also told him, "I have suggested to Mr. Williams I would like to have you." However, Erting testified that Dostal also told him, "I hope you can work some kind of deal out with Mr. Williams that he could get up some kind of meeting." Apparently, such a meeting was eventually set up by Dostal. However, Erting talked at length with Williams *alone*, discussing at length the Company's plans, hospitalization, work hours, and rate of pay. Erting accepted Williams' offer of permanent employment as a stripper on October 22, 1979. According to Erting, it was thereafter in late November or early December that the Union put up a picket line at Williams Litho. As already then a permanent employee, Erting crossed the Union's picket line.

The record reveals that Erting had also previously notified Larry W. Schaffner that Williams was looking for some help. Schaffner was first hired by Williams Litho apparently in early October 1979. Schaffner related that when he first arrived at the shop Dostal had said to him, "You must be Larry Schaffner. Follow me, and I will show you around." After Dostal did so, he asked, "Are you game to starting right now?" Schaffner went to work that afternoon without talking to any other person. Schaffner thereafter worked as a contact man on the second (or evening) shift. Schaffner also recalled it as late November when Local 505 pickets were established at Williams Litho. Schaffner was upset when he came in and saw Local 505 pickets as Christmas was coming on. He immediately spoke to Erting and Record and mentioned to them, and also to Ralph George and Jim Dostal, that he would also like to work there permanently rather than go back to Beaumont. They all agreed that they would like to have him there; and, according to Schaffner, Dostal and George said they would speak to Roger Williams and see what he had to say about it. The following day Schaffner received a call from Dostal who told him to come in and talk to Williams about working full time. Schaffner did and spoke to Roger Williams *alone* in his office. They talked about Schaffner's prior experience at Beaumont and what Williams had to offer, his plans on the job and everything. (While working theretofore at Williams Litho, Schaffner had worked just outside of Williams' office.) During their conversation Williams made Schaffner a wage offer which Schaffner related he considered over the weekend and accepted on the following Monday. The record reflects that Schaffner was hired effective December 3 (a Wednesday). Schaffner thereafter crossed the Union's picket line.

Record related that he was at work when Local 505 established a picket line at the premises of Williams Litho, contending the Employer was doing struck work. Williams at this time also offered Record permanent employment. Record, however, told Williams that, after the strike was over, he would consider it; but that he would not cross the Union's present picket line at Williams Litho. With the strike over on December 17, 1979, Record again met with Williams and accepted Williams' offer; and he was promptly thereupon hired as a permanent employee at Williams Litho. There is no question on this record that Roger Williams was well aware that Erting, Record, and Schaffner were not only previously members of Local 505, but that Record was a member with strongly held union beliefs. I note in passing that Erting and Record were paid $11.87 an hour, with

[11] The General Counsel offered evidence of Lohbeck that Dostal on one occasion had said to Greg Kirby (then a contact man) to start getting to work on time. Kirby's subsequent discharge on April 23 is shown of record to have been the subject of a charge filed and subsequently withdrawn. However, no convincing evidence, indeed no evidence at all, was offered that Dostal had effectively recommended the discharge of Kirby or anyone else.

[12] The record reveals that the calendar display of desired vacation had been itself initiated by Faust shortly before the strike and at a time when he was stripping foreman on the second floor. When Faust later became production manager and moved down to the first floor office area, the calendar was not immediately brought down to be with Faust until Williams directed it be done following an incident of recent staffing difficulty.

Dostal receiving 50 cents more an hour. I find that Erting and Record were experienced, good strippers.

Record related that Faust, who coordinates the different departments, will notify the strippers concerning overtime work, but confirmed that usually it was Dostal who informed him. However, Record acknowledged that he also was never required to work overtime by Dostal. Erting related that Dostal has also requested him to work overtime, and that he had always worked it in the past until March 1980. However, according to Erting, it was within a 2-week period after March 7 that he first refused overtime, telling Dostal that he was upset over having the pay cut (discussed *infra*) to the point that he preferred not to work until that matter was resolved. Dostal simply replied, "[O]kay." In contrast, Erting also related there was another occasion when he refused overtime when Dostal was not present. Erting recalled the circumstances were that he had been asked to work awfully late and he was still upset. On this occasion Williams went away and came back and said, "I need you to work overtime, will you do it?" Erting saw Record giving him the "high sign" behind Williams that "he'd better do it," and Erting subsequently worked that day. Although Record and Erting on occasion rode to work with Dostal, both Record and Erting also regarded Dostal as their immediate boss, or foreman. Both confirmed Lohbeck's estimate that Dostal did production work about 50 to 60 percent of the time, but described the remainder of this time as being spent relatedly in meeting with Faust for instructions, going over the job, coordinating the flow between floors, and making sure that proofs went out. Both related that Dostal assigns work to the strippers; but confirmed that Dostal regularly receives instructions from Faust, and that, though Dostal initially reviews the work and will return it if it is wrong, Dostal (still) takes the work on to Faust for his review.

d. *The specific evidence in regard to the status of first-shift scanner operator Ralph George and second-shift scanner operator Allen Meschke*

In support of his position that first-shift scanner operator Ralph George is a supervisor, the General Counsel would appear to principally rely on the testimony of Joseph A. Tocco. The essential facts are as follows:

Tocco was hired by Williams Litho on April 16, 1979, as a four-color cameraman, a highly skilled position apparently second in the trade only to that of scanner operator. Tocco had previously worked at Color Associates for 4-1/2 years and at another union shop prior thereto for 8-1/2 years. Tocco had thus been a member of Local 505 for 13 years prior to employment at Williams Litho. While working at Color Associates, Tocco had worked with Ralph George. (George had been hired by Williams Litho about a year and a half earlier on September 19, 1977.) According to Tocco, he heard through a mutual friend that there was an opening at Williams Litho and that George would like to talk to Tocco about it. In a resulting phone contact George told Tocco that there was a job opening, with room for advancement; and George suggested that Tocco come down and talk to him, as that way Tocco could then see about the position. Tocco did so on April 2, 1979.

Tocco related that after he arrived, for about half an hour, George had first shown him around the shop, and told Tocco that his duties would be (four) color separation camera work. George told Tocco he had the job if he wanted it; and he suggested that Tocco then go speak with Williams, which Tocco promptly did. Tocco spoke with Williams *alone*, for about an hour. According to Tocco, they discussed Tocco's background, that it was a close-knit family and what Williams expected of him, how Williams liked things to be done, and finally discussed money and benefits which Tocco summarized as being liberal. When Tocco indicated agreement on the offered wages and terms, Williams told him to go ahead and give his present employer 2 weeks' notice. Before leaving, Tocco returned to George, and told George that he was going to get along fine with Williams; and told George he wanted to work there and appreciated it. Tocco related that George then said, "[G]ood"—as soon as he could get out of Color Associates, Tocco had a job there. The General Counsel would make much of the latter. However, as noted, Tocco had also testified that Williams had already told Tocco to give his present employer 2 weeks' notice; and also that when he did, if he was fired, Tocco could immediately come to work at Williams Litho. Tocco candidly acknowledged, and there is really no question herein, that it was Williams who hired Tocco after a personal interview.

Tocco testified that George attends the production meetings with Faust and Dostal, and occasionally Ross; but also confirmed that George spends the great majority of his time on the scanner. Tocco did also testify that he had been recently offered overtime by George (on a Friday and Saturday) along with specific directions on a difficult job given to him and another (second-shift) cameraman who was to do some preliminary work when Tocco had declined the Friday night overtime (preliminary) work. Tocco testified that George did call him on Saturday, checking on the progress of the job; and that he did give further technical directions, including that Tocco was to finish up the job in the 7 hours he was to work that particular day. Tocco did acknowledge that George did not say who made the initial overtime decision, but asserted that George would know what overtime is involved by people (Faust, Williams, and Ross) informing him what job or jobs he had to get out of the department; and he admitted that he was not familiar with what went on in those management positions. In that connection Tocco had otherwise testified that Faust does not tell him *how* to do his job, as Tocco was a journeyman cameraman with 15 years' experience and knew what was expected of him; and that, although Faust coordinated the camera work production schedule, he was not knowledgeable about camera work itself. Tocco acknowledged that George was a camera expert, and that George previously had reported directly to Williams. Although the General Counsel would rely on Tocco's assertion that George had in April 1979 originally said the Employer's camera department was under his control, Tocco on other testimonial occasions could not recall

George saying it was under his control, though he did recall George had said, "[T]his is my baby."

Tocco, however, did assert that George had disciplined him, based on the statement of George that he was going to put two (camera) employees on the night shift because Tocco would not work any more overtime. (Tocco related that in March Ron Goebel was on days but now works a camera on the night shift.) According to Tocco's understanding, Goebel was a black and white cameraman in training to be a four-color cameraman, though he also acknowledged that he did not know Goebel's present work status.

The General Counsel's evidence that second-shift scanner operator Allen Meschke is a supervisor is essentially that earlier reported, and no more; and thus, as noted, is based essentially on statements made in a February newsletter to employees. Therein, *inter alia*, appears:

> *New Appointments*
>
> 1. Larry Ross has been named vice-president. Larry's duties will include personnel management in addition to his normal sales function.
> 2. Allen Meschke has been promoted to night supervisor.
>
> All of the support and cooperation you have given in the past will hopefully be extended to Al and Larry. This encouragement will certainly be received with maximum enthusiasm.

Evidence was offered that on two occasions Meschke initialed an employee's timecard. There was otherwise no specific evidence offered independently as to his exercise of statutory supervisory authority. Working also on the second shift were only black and white cameraman Goebel and contact man Schaffner. It is observed that a third scanner operator apprentice, David "Mel" Rainey, worked on the third shift alone. As noted, a work assignment as scanner operator or cameraman is automatic.

e. *The Employer's evidence*

Williams testified essentially that he has done all of the actual hiring and firing of full-time employees except that since January and since Ross' appointment as vice president in charge of personnel a discharge and an indefinite layoff have been accomplished by Ross after consultation with Williams. Williams testified that, though Faust cannot hire anyone on his own, Faust could fire an employee, though he has not done so to date. Williams testified that he would give a recommendation for hire made by George or Dostal a great deal of weight, just as he would the recommendation of Erting or any other really good craftsman.

Williams thus testified that he has done all of the hiring of permanent full-time employees for the shop and this record fully bears him out. Williams related that he never really hired people on a temporary basis as such during the strike. He explained that at that time they were working three shifts of strippers and contacters around the clock; he also had three or four dot etchers working day and night; the cameras were being run 24 hours a day; and one scanner (at that time) was working 24 hours a day, 7 days a week. According to Williams, during the strike a lot of employees would be there a short while, only to go to work someplace else; and it was common knowledge that if you had a buddy, for example on a picket line, to bring him in as there was a lot of work. I find Williams' above relations in the context of this case to be generally credible ones.

The specific hirings of Joe Tocco, John Record, and Larry Schaffner

Williams related that with regard to the prestrike hiring of Joe Tocco, a four-color cameraman, the Employer simply needed a four-color process cameraman at the time; and Williams asked around in the shop if anyone knew or had worked with anyone who would possibly be interested in going to work for the Employer. According to Williams this is the way he normally does it. Ralph George, who had worked at Color Associates, called someone at Color Associates who suggested that they contact Tocco. Williams acknowledged that he asked George, who had worked with Tocco, what kind of a craftsman Tocco was, and that George told him Tocco was a good, hard worker, and was pretty darn good at color separation. Williams himself knew that Color Associates did color separations, and that they had a good reputation. Williams testified that he told George, "Why don't you see if you can't get him to come in and talk to me?"

Williams acknowledged that, when Tocco eventually came in, Tocco first talked to George and was shown around the shop. Williams testified, however, that Tocco then came upstairs to his office and that they talked considerably, and that during the conversation Williams hired him. Williams related that he first checked into Tocco's background, they then discussed the technical aspects of shooting positives, and thereafter Williams told Tocco about his Company. Williams testified that he had told Tocco that he had an open-door policy;[13] that he told Tocco of the Company's profit-sharing plan and its health and welfare plan; and that he then discussed wages, making a notation for Tocco's file at the time that Tocco would start at $11 an hour, that he would work 40 hours weekly for a total of $440, and that all union raises were to apply. Williams also confirmed telling Tocco to give his employer 2 weeks' notice.

Williams testified that he also hired Wayne Erting and John Record. The circumstances were that both came to work part time right after the industry strike. Williams related that at that time he had so much work that he was desperate for strippers. He contacted a stripper at a nonunion company to inquire about available strippers. Williams recalled that Erting called him back almost immediately. Williams confirmed that Erting mentioned that he had a friend who was also interested in work (Record) and Williams told Erting that it would be fine to bring him along and anyone else. Record and Erting

[13] I credit Williams, whom I found to be generally credible, and on this matter as well, noting in that connection that Lohbeck testified that he knew that Williams had an open-door policy from the time of his own initial hire (1977) when Williams told him that if he ever had any problems to come and talk to him about them.

were hired as part-time (nonpermanent) employees. Both are good, experienced strippers. Williams confirmed that Erting later was offered and accepted a full-time position on October 22, 1979. According to Williams, Record worked steadily except for the time he took off to picket. Since Erting and Record were good friends Williams kept after Erting to see if Record would be also interested in going to work for the Employer full time. Williams confirmed that Record's position was that he would not cross a picket line to go to work. When the picket line was established at the Company, Record stopped working for the Employer, though offered permanent employment, telling Williams, however, that it would be likely *after* the picket line was down that he would be interested in permanent employment with Williams Litho. After the strike was over and the picket line was removed, Record came in and talked to Williams in the office and Williams hired him.

In connection with employment during the strike, Williams testified, as noted, that he would ask anyone in the shop if they knew of anyone to bring them in to go to work; and that many were employed at that time without interviews. If someone showed up they were put to work, only being shown where the materials were.[14] With regard to Schaffner, Williams testified that he did not know how Schaffner initially got hired during the strike, and that Schaffner could have talked to anyone. Williams did recall that during the strike, when the picket line was established at the Employer's premises, Schaffner would not cross the picket line as a part-time employee. On that occasion Williams offered full-time employment to Schaffner, who accepted it.

According to Williams, Faust does discipline the production employees in the sense that Williams will tell Faust of any observed employee conduct that Williams wants corrected, unless the observed conduct is very serious. However, Williams testified that it is he who decides if a vacation date must be taken by an employee because of slack work, though he will ask George or Dostal initially to ask for volunteers. If no one volunteers Faust or he will then ask an employee to take the time off. Williams testified without subsequent contradiction that at that point Williams will go in a line of succession from the individual who had taken the last day off. I credit Williams in regard to mandatory time off.

With regard to Tocco's assertion that he was disciplined by George by having overtime taken away, Williams denied it, rather explaining that the situation was as follows: Williams asserted that it was in January and February 1980 that they had Tocco working on days and *two* cameramen on nights. Before that time, during the strike, they had operated in the same manner, and it had worked well for them. However, after the strike was over on December 17 one of those two (night) cameramen then employed went back to his old job. In January Williams hired another four-color cameraman to replace him; namely, Budd Rapp. Williams candidly acknowledged that he discussed the matter with Ross, Faust, and George and they all thought they needed another four-color cameraman. Rapp was discharged on February 27.

With regard to the scheduling of vacations by employees, Williams testified that Faust had initiated the idea of a calendar before the strike of August 1979. Strippers are on the second floor. When the stripper was ready the practice was that the stripper would just write in his desired vacation time. When Faust moved downstairs he did not take the strippers' vacation calendar with him. It developed that a lot of times on Monday mornings a stripper was not there. Williams candidly acknowledged that Dostal had tried to avoid two strippers being gone at the same time. (Employees conceded Dostal did not refuse vacation requests.) Williams had Faust take the calendar to his desk and keep it up there so that the Employer would know when the vacations were being scheduled to be taken.

f. *Other considerations*

Williams, Ross, and Faust are all salaried employees. Dostal, George, and Meschke are all hourly paid, regularly punch a timeclock, and receive the same fringe benefits as do other production employees. Dostal, employed (last) since April 3, 1978, receives 50 cents more an hour in wages than strippers Erting and Record, both of whom are experienced strippers who were only recently hired in October and December 1979, respectively. George and Meschke are scanner operators, a position acknowledged to be at the top of the trade and above that of a four-color cameraman. George, employed since September 1977, was paid 65 cents more than Tocco also on the first shift. Meschke, employed since April 11, 1978, receives $1.14 more than black and white cameraman Ron Goebel, also on the second shift, but 34 cents *less than* four-color cameraman Tocco, employed a year later and working on the first shift. While it is shown that Dostal, George, and Meschke have all initialed the timecards of other employees, so also has the record revealed that the payroll secretary has done so as well, an equally significant number of times.[15]

2. The union activity

a. *The apparent causes of employee unrest; the commencement of union activity*

The Employer's workweek was essentially 40 hours with time-and-a-half pay received for overtime hours, and generally a premium difference paid journeymen. In contrast, the Union's current (and prior) contract essentially provided for time-and-a-half pay for each 2 hours worked over the standard day shift (which generally was a 7-hour day on a 35-hour workweek in the area) and double time thereafter, including double time pay for

[14] Williams related that (occasionally) he did hire someone who was incompetent; that he spoke to Ross, Faust, and Dostal about one such man; that he could (personally) see that the jobs done by that man were being done very badly, and by whom a Ross job had been particularly messed up. However, it was Williams who contacted the employee and told the employee that he would not be needed back the next week.

[15] The General Counsel has introduced evidence by stipulation that the timecards initialed during the period of December 31, 1979, through June 1, 1980, were thus initialed by Dostal some 26 times; by Faust, production manager, 5 times; by Ross once; by Meschke twice; and by Janice Soer, secretary (payroll), some 10 times.

Saturdays and Sundays.[16] As noted, from the time of the strike, and continuing through March 1980, there had been considerable work generated in the Employer's shop and there had been resultingly considerable overtime to be worked by the employees. Record asserted there was discontent in the shop and major interest by employees at this time about the overtime payments. Record's understanding was that some were getting double time and some were not. The record does not clearly reveal which of the Employer's employees, if any, or *when*, may have actually received double time. What it does reveal convincingly was that the Employer did pay certain employees (journeymen) a $1 premium in their rate, 35 cents of which was identified by the Employer as an hourly rate makeup provision for the difference in union pay for overtime. Record acknowledged otherwise that Williams Litho paid union scale.

I am convinced that it is more probable that it was in early February that Larry Ross was put in charge of personnel.[17] According to Record, in succeeding weeks the employees became upset with Ross. On February 27, employee Bud Rapp, hired as a night cameraman in January, was in appearance fired (solely) by Ross without prior warning. Record had worked with Rapp at Beaumont Graphics and personally liked him. Record, corroborated by Erting and Lohbeck, testified there was considerable employee feelings generated that Rapp's discharge was unfair, as accomplished without any proper warning. Erting acknowledged that his own expressed reaction at the time was one mistake and you could be out of a job like Bud Rapp. Record related that the employees kept coming to him, asking him about what was going on and what could be done about conditions in the plant; and they asked Record for a comparison of the conditions in the Employer's shop with that of a union shop. Record would freely tell them his own views.

As some of the employees had indicated to Record that they wanted a meeting with the Union, Record made the first contact[18] with the Union and arranged for a meeting to be held on March 3 in the Union's board room at its headquarters in St. Louis. When the meeting was first being arranged, Record intended the first meeting to be for just a few employees, and that it be held without Williams knowing anything about it. However, within 2 or 3 days, according to Record, it seemed that everyone in the shop knew about it, so Record then went about and personally asked all the employees in the shop if they wanted to come to the union meeting, *including Jim Dostal.* According to Record, Dostal's reaction was that he did not feel it was time for the shop to go union; but that he at first indicated to Record that he was going to go to the meeting.

Lohbeck, who was not a prior member of Local 505, related credibly that, in the week prior to the union meeting of March 3, he had discussions with Record, Erting, and Dostal about the Union. The discussions covered generally what the Union had to offer, what they were presently getting, and about signing union cards. His discussion with Dostal, who also had not previously been a member of Local 505, concerned whether they would go to the union meeting; and he recalled that he had first heard about the union meeting on either Wednesday (February 27) or Thursday (February 28).

Dostal related that his first knowledge of union activity at Williams Litho came a day or two after Rapp was fired, subsequently confirming that it occurred on Thursday, February 28. Employee Mark Edelman, who also had not previously been a member of Local 505, came to Dostal after lunch and told Dostal that there would be an informational meeting at the union hall the following Monday. Edelman asked Dostal if he would be interested to go. However, Edelman also told Dostal that the rest of the guys in the shop, mainly the strippers, did not want him informed; Edelman further told Dostal that they were afraid that Dostal would go to the union hall and run back and report everyone that was there and what went on. Dostal told Edelman that he did not know if he would go or not. Edelman then said he hoped Dostal did not burn him by telling Williams of the meeting. (I do have difficulty in fully accepting Dostal's further relation that he did not know what Edelman meant by the latter comment. Nor do I readily accept Dostal's assertion that Edelman in the interim between Dostal's subsequent conversation with Williams had informed Williams of the meeting, in the face of Williams' subsequent testimony that his first awareness of the union organizational effort at his shop was on March 3, or shortly prior thereto, when Dostal came up to him and said that the Union was having an organizational meeting.) Dostal otherwise acknowledged having a conversation with Williams that Thursday in which he told Williams that there was going to be an informational meet-

[16] E.g., see G.C. Exh. 23, sec. 11.1–11.3, pp. 14–15. It was stipulated that under the successive contracts (with durations, respectively, of July 1, 1977, to June 30, 1979, and July 1, 1979, to June 30, 1982) between the Printing Industries of St. Louis and Local 505 regular hours are set at a 5-day, 35-hour workweek, with time and a half being paid for the first 2 hours of work over 7 hours per workday and double time being paid for hours after that and on Saturdays and Sunday. Union Vice President Witt later testified that a few shops (e.g., under first contract) still had a 40-hour workweek. In any event, Williams Litho did not pay overtime in the contract fashion. Rather, the Employer paid straight time on a 40-hour workweek basis and time and a half thereafter, with the above premium paid to journeymen (except Lohbeck).

[17] I also find that it was in February that the Employer had distributed to each employee its February (employee) newsletter in which it reported: the Employer had had record sales of over $1 million in 1979; that it had purchased additional and more efficient equipment; that it had plans for prospective new quarters; and that employees' profit-sharing figures *would be* in about the end of February. As earlier noted, it also confirmed to employees that Ross had been promoted to vice president in charge of personnel.

[18] Prior to going to work with Williams Litho, Erting had also notified the Union and received their okay. However as noted, Erting had worked behind the picket line of Local 505 in December 1979. Erting denied that charges were ever brought against him for doing so; though he acknowledged appearing before the Union's executive board for an investigation of the nature of the work they were then doing; i.e., whether it was struck work. His testimony otherwise was that if there was discussion of organizing Williams Litho it was to the contrary at the time. He denied that he told anyone that charges against him were dropped because of his agreement to organize Williams Litho though he on cross-examination explained that he had heard hearsay talk from others at the time that that was what the Union was going to do if he went out there to the executive board meeting. Be that as it may, I am convinced that there was crosstalk in more material times by employees that the reason he had gotten away with crossing the Union's picket line was that a union petition would be coming later.

ing at the union hall. According to Dostal, it was later that same day that he spoke to Record about the meeting out of curiosity.

Dostal mentioned to Record that Edelman had spoken of the informational meeting and asked Record what it was as he had not been to one before. According to Dostal, Record explained that union officials would be there and would go over the benefits of a union, pension plan, etc., and would then ask each employee to sign a card stating that the employee would like to have an election at your shop. Dostal's recollection was to the effect it was common knowledge that their hours were different. However, Dostal did not recall Record's making any mention that overtime was computed differently. Dostal recalled speaking to Record about Edelman's earlier statement that the guys did not want Dostal to go; and Dostal testified that Record's reply was that Dostal was free to come if he wished; that, "If they don't want you to go that is their problem"; and that, if Dostal felt he should go, to go.

Lohbeck testified credibly that on March 3 he asked Dostal if he was going to go to the meeting and Dostal replied he was not as his baby was sick. Dostal confirmed that he did not attend the union meeting of March 3, asserting that he worked late, but also confirming that his wife had called him and asked him to come home early because his daughter had come down with a cold. In passing, I further note that Williams also testified without contradiction that employee Becki Slessinger had asked him if she could attend the union meeting and that he had told her yes. There is no question on this record that Williams knew about the Union's scheduled informational meeting of March 3 before it was held. There is no evidence that Williams (or Ross or Faust) took any action to interfere with it.

b. *The union meeting of March 3*

On March 3, the first (and only) union meeting at the Union's hall was held at 6:30 p.m. Present were Union Vice Presidents Charles Witt and Bob Kinamore. Employees present were strippers John Record, Wayne Erting, Mark Edelman, Ed Lohbeck, and Greg Kirby and cameramen Joe Tocco and Ron Goebel. Of the seven employees present only three, Lohbeck, Goebel, and Edelman, were not and had not previously been members of the Union.

The meeting, which lasted about 2 hours, was held in the Union's board room, with employees sitting around one end of a large long table with Witt at the head. After the employees had signed an attendance sheet before Witt upon entering, there followed a lengthy discussion of various union matters. Toward the end of the meeting Witt handed out single-purpose authorization cards,[19] had employees read the cards, and told the employees the cards authorized the Union to represent them and/or to be their bargaining agent, and also (essentially) that they would be used to petition for an election or a vote. However, Record, Erting, Edelman, and Lohbeck have all credibly testified that Witt did not say that the cards' only purpose would be to be used for such an election or a vote. Witt said that he liked Roger Williams and that, if they signed, they should stick by it; they should not get the process going and then forget it. Each of the employees in attendance, except Lohbeck, thereupon individually signed a union authorization card. After the employees had finished filling out the cards and signing them, the cards were then handed back to Witt, who announced that all of the employees there had signed except Lohbeck. Lohbeck said that he would like to think it over before he signed, and Lohbeck took a blank authorization card home with him to possibly sign later. According to Record and Edelman, Witt said that he did not like to petition for an election unless they had 70 percent of the cards signed, and that there were not enough people at this meeting to justify going on with an election. Second shift employee Schaffner (also already a member of the Union) was working and thus unable to attend, but Schaffner had asked Record to pick up a card for him. Record obtained additional cards, and he was also instructed by Witt to pick up any cards that were out and to bring them back to the hall.[20] Accordingly, I find that on March 3 strippers Record, Erting, Edelman, and Kirby and cameramen Tocco and Goebel thus signed valid authorization cards designating the Union as their collective-bargaining representative in regard to wages, hours, and other terms and conditions of employment.[21]

c. *Immediate post-union meeting discussions; the petition filing*

Dostal acknowledged that he had conversations with Lohbeck, Edelman, and Record on Tuesday, March 4, about the March 3 union meeting. The first conversation

[19] The card in evidence provides:

AUTHORIZATION

I, the undersigned, an employee of the Williams Litho, authorize Local 505 Graphics Arts International Union—AFL-CIO, to act for me as my collective-bargaining agent with my employer on matters respecting my wages, hours and other terms and conditions of employment

[20] The foregoing facts are based on testimony of employees Record, Erting, Edelman, Lohbeck, Tocco, and Goebel, and Union Vice President Witt, to the extent found mutually consistent and credible.

[21] Authorization cards for each of the above-said employees are in evidence, each of which on the back contains Witt's initials and the date of March 3 placed there by Witt. Although it is observed that Edelman's card bears the date of "3-5-80," which date he entered, Edelman, as clearly appears of record, was uncertain as to the correct date of the meeting (as well as to other dates). However, Edelman, along with other employees, signed the same attendance sheet of the only union meeting held at the hall, which Witt and all the other employees in attendance, except Kirby, have mutually and convincingly testified was held on March 3. Despite Witt's inadvertent placement of the date of "2-3-80" on the attendance sheet, Witt's placed the date of "3-3-80" on the back of the cards. All who testified have testified that Edelman was present at the March 3 union meeting, and Erting has specifically testified that he saw Edelman sign the card. Kirby, at the time an apprentice stripper, was subsequently discharged on April 23. As earlier noted, Kirby's discharge is not the subject of any complaint allegation, and Kirby did not testify herein. However, other employees have confirmed Kirby's attendance as well; and employee Goebel, who specifically recalled sitting next to Kirby and handing him a pen to fill out a card, has testified credibly that he saw Kirby sign the card. As noted, Witt had given Kirby a blank card and had received back a signed card, which Witt thereupon dated and initialed. The weight of the evidence presented is thus convincing that the cards were signed as found above

was with Lohbeck at 7:40 a.m. at Lohbeck's table. Dostal asked Lohbeck if Lohbeck had ended up going last night. Lohbeck replied that he had gone; that all they (the employees) did was sit while they were told about the Union; that they (the Union) did not ask him to sign anything, and they did not pressure him about signing anything; and that the only thing the Union had that he liked was the (portable) pension plan, which provided that if he quit and went to another union shop his pension would follow him. Although unspecified as to time, Dostal recalled that the third conversation he had that day was with Edelman. Dostal related, without subsequent contradiction by Edelman, that, as he walked by Edelman's table, Edelman told Dostal that he had gone and listened to what the Union had to offer, and that he was going to make up his own mind.

Significantly, however, Edelman testified that on March 4 he also went to Williams' office and told Williams that in his honest opinion there "was not anything going to come from the meeting, that there was not enough there to petition a vote." Edelman explained that he went in to tell Williams that because he realized that Williams could not ask about the meeting. Lohbeck also acknowledged that on March 4 he had told some people, possibly Dostal and Edelman, that he was not persuaded by Witt's presentment; and Lohbeck testified additionally that he had no further conversation with Dostal about signing a card after March 3.

Dostal's other conversation was with Record at Record's table, though Dostal did not recall if he had approached Record. Dostal's version of that conversation is that Record indicated there was not enough interest in the Union; that it was a very poor showing; that enough people had not gone up there to show an interest in organizing; and that the Union was not going to bother with it; and also that Record said he did not feel at the time they would even bother with it.[22] Dostal acknowledged that he knew that Record, Erting, Edelman, and Lohbeck had planned on attending, and had attended, the union meeting.

Record's version initially was that he inquired of Dostal why Dostal did not show up, and that Dostal replied he did not think he wanted to sign a card. Record replied that he did not think Dostal did either. (On rebuttal, Record additionally related that he on that occasion jokingly told Dostal that he did not bother to get Dostal a union card because he did not think Dostal wanted one, and Dostal replied, "no.") Dostal asked what was going to happen; and Record told him that he did not know for sure, that the Union desired 70 percent of the cards to start a campaign, that he did not know what they were going to do, and that he heard they might wait. However, Record denied that he actually told Dostal there was not going to be any campaign or that they were not going to try to organize the shop. I credit Record to the extent I find he did not make either such statement, *in haec verba*. But that reasonable impression was left with Dostal that organizing might well be interrupted for insufficient interest on the part of employees is clearly quite another matter.[23]

Lohbeck testified that he signed his union card on March 4 at home. When Record some time later inquired of Lohbeck whether he had signed the card, Lohbeck told Record that he had, but he was "not going to give it to [him] yet." Lohbeck explained that he had held the signed card because he had mixed emotions whether to go ahead with what he felt he wanted against what he knew Williams' wishes were, it being Lohbeck's understanding at the time from prior talks with Williams that Williams had no intention of becoming a union shop. Lohbeck had not been receiving the premium rate.

In the interim on March 4 when second-shift employee Schaffner arrived Record's version is that he did not personally hand Schaffner a card but placed a (blank) union card in Schaffner's coat pocket, told him about it, and the next day (March 5) retrieved it from Record's toolbox where Schaffner had placed it. (On rebuttal, Record generally related that while he did not do anything to keep the Union secret he did tell the employees not to say anything.) Schaffner confirmed that he put a signed union card back in Record's toolbox, but otherwise related that he was handed the card by Record shortly after 3:30 p.m. when Schaffner started to work, that Record told him the Union needed cards to obtain an election, that he read the card as he was talking to Record, that he then put the card in his pocket, that he filled it out and signed it later at 8 p.m., and that he then put it in Record's toolbox as he had said he would. In a prior statement given during the investigation, Schaffner had stated he could not recall if Record said the only purpose of the card was to get an election. As noted, Schaffner at the time was a dues-paying member of Local 505, and he read the card before signing it and left the filled out and signed card for Record's retrieval on March 5. Lohbeck confirmed that he eventually turned his signed card in to Record on March 5 or 6. I am thus convinced that by at least March 6 eight employees had validly designated the Union as their collective-bargaining representative in regard to wages, hours, and other terms and conditions of employment.

[22] Dostal had additional recollection that Record had told him on this occasion that it was a bad time to organize; that Record had told them personally that he did not feel that was a good time to organize the shop due to the fact they had come off a 21-week strike, and people were not that hot on the Union to vote for it at that time, as the strike was still fresh in their mind, and that he had suggested they wait until a later date, which Dostal did not pursue. On rebuttal, Record not only denied he had then told Dostal it was a bad time to organize because of the recent strike, etc., but Record also denied he had told Dostal that there was a poor showing or not enough interest at the meeting. I credit the former denial of Record because I am convinced that Dostal has there combined a misrecollected partial conversation that was more probably related to other events. However, as to the latter Record denial insofar as sufficiency of interest, I find Dostal's version is far more plausible on the weight of the evidence, including Dostal's otherwise compatible version, Edelman's testimony that Witt said it would be a waste of the Employer's and the Union's time if there was not sufficient interest, Record's own admissions as to not knowing what they were going to do and that they might wait, and the nature of other concurrent action of other employees, discussed *infra*. I note, however, that Record *was* at the time obtaining other union cards.

[23] Record's testimony advanced only initially on rebuttal that Dostal asked everybody if they signed a card and was told by employees that they did not, which the record reveals was not corroborated by any other employee, is not credited.

However, in the interim on March 4 Williams confirmed that he had received a report from Edelman, though at the lineup table in the stripping department, that Williams did not have anything to worry about; and that Edelman had also told Williams that Lohbeck had told Edelman (essentially) that Witt's presentment at the union meeting had not persuaded Lohbeck. The report to Edelman is conceded by Lohbeck as possible, and, indeed, one I find probable.

Dostal testified that following his conversations with Lohbeck, Edelman, and Record, though not based on what Lohbeck and Edelman had said (thus based on what Record had said), he told Williams on March 4 that evidently there had not been enough interest in the Union; that things evidently were cooling down as far as organizing; and that, from what he heard, there was not sufficient interest in the Union for them to pursue it any further. Dostal otherwise testified the union activity had been pretty hot prior to the union meeting, and that there was a lot of conversation about the Union on March 4, but not the rest of the week, though he continued to hear some overtones. He denied he heard anything or saw anything thereafter in regard to card signing.

Williams essentially confirmed Dostal that on either March 4 or 5 Dostal told him that he had heard Williams had nothing to worry about, and that they did not have sufficient people show up at the meeting. Williams acknowledged that he has known Witt for 10 years, and that he knew Witt was an officer of the Local, but made no attempt to contact Witt in the period March 3–7.

At noon on March 7, Record left the plant (a not unusual occurrence) and delivered the two additional authorization cards of Lohbeck and Schaffner to two vice presidents of the Union, Bob Kenamore and Jim Timmerman. Local 505 thereupon filed a petition on March 7 with Region 14, at approximately 1 p.m., with the above 8 authorization cards thereupon date stamped in the Regional Office in support of the petition filed, with the unit therein claimed to constitute *15* employees.[24] The said petition also indicated in paragraph 7(a) in regard to request for recognition the typed words "Petition constitutes request."

d. *The Williams-employee meeting of March 7*

Williams testified that he held a general meeting of employees on March 7 because the employees were not getting much work done and because it was apparent to Williams that there was some problems and he wanted to get to the bottom of it. Williams also testified without contradiction, and I find credibly, that prior to the strike and ever since he had the Company and employees that he had held regular monthly meetings in which he would discuss how the Company was doing, and whether it was making or losing money, and in which he would also discuss employee problems and problem solutions. However, Williams acknowledged that there had been no such employee meeting held since the strike began in August 1979 until March 7, 1980.[25] The Employer does not contest, and, indeed, Williams essentially did not even testify as to the substantive content of this meeting. The testimony of Record, Erting, and Edelman thereon is basically not disputed. The determination of facts is thus one of interrelating the varied testimony of employees. Having considered such testimony, I am convinced and I find that the meeting essentially transpired as follows:

The meeting, announced by Faust on March 6, was held in the afternoon of March 7, after work at 4:30 p.m.; and employees on all shifts were in attendance, except for one secretary who covered the phones.[26] Williams, Ross, and Faust were present; but Williams alone presided.

I credit Erting's recollection that Williams started this meeting by saying it was an open meeting, for anyone to bring out any points they wished, and anytime anyone wanted to interject anything into the conversation they were free to do so. Record testified credibly that Williams said there had been a lot of little meetings and things going on, and he knew there was some unrest; and he wanted to get it all out in the open, find out what was wrong, and see if they could settle the problem. (Record acknowledged that Williams made no specific mention of a union organizing campaign or in regard to a union petition.) Williams brought up the discharge of cameraman Bud Rapp and explained what had happened from the Company's point of view.[27]

Williams also discussed his open-door policy in the sense that Williams stated that Ross was vice president in charge of personnel, and that if the employees had any problems they were welcome to go to Ross with those problems to try to work them out. However, third-shift scanner operator Rainey said that several employees did not get along with Ross; and some of the other employees indicated their agreement that they were not getting through to Ross with their problems, and that Ross was less than understanding. With Ross interjecting at some point that the employees could have a spokesman, Williams said that, if the employees were not satisfied with what Ross would come up with as some kind of agreement on what was wrong, the employees could always

[24] In passing, it is noted that Witt testified that he told George that he felt George was a supervisor, discussed *infra*.

[25] Williams explained that when the strike came in August they stopped the meetings because they were so busy and because so many people were there that did not need to know the things that he would normally discuss at the meetings.

[26] From the fact that production employees from all three shifts were in attendance at the meeting, I am convinced by Erting's testimony that the announcement of the meeting was made on March 6. The only evidence as to announcement was from Record that Faust had informed him of the meeting.

[27] While Williams did not testify as to what he said in the meeting, Williams otherwise testified that Rapp was fired in late February for producing bad work after prior warning. Thus, Williams testified credibly that, in the week prior to Rapp's discharge, he had discussed Rapp's work performance with Faust, and at great length with Ross; and that both he and Ross jointly then warned Rapp. Ross, however, did the actual firing of Rapp as the first exercise of his new responsibility for personnel. Williams did not recall if George also favored the discharge, and no evidence was offered thereon. Erting also generalized there was "animosity or problems" at the meeting. He related there was a lot of discussion about people making too many phone calls and about their forgetting to punch in and out on their timecards.

go to see Williams; and, if worse came to worse, they could have some kind of an employee representative or spokesman, but Williams did not call for an election of one then, nor set a time or date for it.[28]

During the conversation, Record brought up the subject of the Union's pension plan versus the Employer's profit-sharing plan. Record said the Union's pension plan had paid 7.5 percent that year. Williams replied that his profit-sharing plan was up quite a bit compared with the Union's plan, Record recalling it being stated as 11–14 percent that year. Erting inquired if there was a certain percentage guaranteed to be paid in out of the profits. Williams testified there was no guaranteed amount but it had been better than other things. Erting also recalled there was discussion of an employee quitting at a union shop and moving to another shop and retaining his pension, whereas if he quit Williams he could not retain his profit-sharing plan. Record's misunderstanding that the Employer's profit-sharing plan had no waiting period and had a 5-year vesting plan was corrected with Record being informed it was a 10-year vesting plan with 1-year waiting period. There was also brief mention of Erting's problem with the cost incurred under the Employer's health and welfare (insurance) plan that he would not have incurred under his prior union plan. The record does not indicate Williams' response, if any.

In what was described by Record as being a major matter of interest among employees there was discussion about overtime payment. On this subject the testimony was more consistent. Thus, Record testified that during the discussion Williams said that he did not want anybody to leave, he explained the difference between hours and overtime provisions, and he then proposed two plans that the employees could choose from. Plan A was the Employer's existing plan with a 40-hour straight time workweek and all hours thereafter, including Saturday and Sunday, being at time and a half, but with certain employees (journeymen) continuing to receive the premium money; and plan B was a proposed 35-hour workweek, with 7 hours at straight time and the next 2 hours at time and a half on a workday and all thereafter at double time, including Saturdays and Sundays, which was essentially the union plan as it existed for several years under their contract. However, there would then also be a reduction of the premium rate to 65 cents. A vote was then taken by secret ballot, which was 10 to 6 in favor of the 35-hour workweek. Erting essentially corroborated Record, except that he, at least initially, would place this discussion and vote as occurring (generally) after the open meeting remarks. It was also stipulated by the parties that if additional employees testified thereto they would testify that at the employer-employee meeting of March 7, after a vote was taken, Williams announced the results of the vote would be made effective Monday, March 10, 1980—in short the 35-hour workweek was put into effect on March 10.

e. *The Erting-Williams meeting of March 10*

Erting and Record left the meeting of March 7 before it was completed because they had to attend a bowling game, but clearly only after the new 35-hour workweek had been voted in. On Monday morning Erting (and some others) had misgivings about the latter program and discussed with other employees the possibilities of seeking an alternative from Williams that would include a 40-hour workweek and double time. While Erting was not elected employee spokesman for that purpose, Edelman related that the employees had generally agreed that anyone who wanted to be same should have it. There is some dispute between Erting and Williams as to what occurred.

Erting's version is that on Monday at 9 a.m. Erting went in to talk to Williams about the new 35-hour workweek with the 35-cent reduction in premium. Erting had a 45-minute conversation with Williams alone. Erting began by telling Williams that after talking to the employees he felt like everybody preferred something kind of in between the two options, and that many employees wanted an opportunity to reconsider their decision to go to a 35-hour workweek. Erting related that he made suggestions of two alternative plans, both involving a 40-hour workweek at straight time, and one with time and a half for the next 2 hours beyond that and double time thereafter, and the other with time and a half for one-half of the day on Saturday and double time thereafter. Erting recalled that Williams said, "Why didn't you bring this up on Friday, why wait until now with these suggestions?" Erting replied that the people were kind of afraid and unsure, and that they did not know what to say. He has Williams saying, "Well, why don't you find out for sure from the people"; and, "Find out for sure what the other employees felt." Thus, according to Erting, he did not suggest having a meeting with employees, Williams did; and Williams suggested that they get together and talk about the alternatives that could be worked out. Williams told Erting that Erting could have the meeting of employees on company property *after working hours.*

Williams confirmed that Erting met with him on Monday morning in regard to the new 35-hour workweek. Williams' version, however, was that Erting said

[28] Most difficult in factual resolution has been the determination of what actually was said with regard to an employee representative. I have no doubt that such a representative or spokesman was mentioned. I also have no doubt that the concept was approved of but not pressed by Williams. Edelman related simply that Williams did say that they could develop a spokesman, though recalling Ross as having initiated it and Williams then furthering it. With some inconsistency, Record initially related that he did not think there was any discussion of what would happen if an individual did not feel he could talk to Williams or Ross, only later to relate that Williams said they could have an employee representative if they felt that they did not want to come to see him individually, and to finally recall (I find more plausibly) that Williams had said, if they (the employees) were not satisfied with what Ross would come up with as some kind of agreement on what was wrong, they could always go see him (Williams) and, if worse came to worse, they could have some kind of an employee representative. Erting's version was supportive but faltering as to specific statements made. Thus, Erting related that Williams suggested that the employees get together and elect a spokesperson, or whatever you want to call it, a steward of some sort to present suggestions or grievances or whatever the employees might have. However, Erting clearly hedged in relating that Williams said he wanted employees to get together and elect a spokesman, or whatever you want to call him, a steward, in also testifying that Williams said he would like the employees to if they wanted to; and Erting acknowledged also that Williams did not call for an election of an employee representative or spokesman then, nor set a time or date for any such action.

he was not happy with the 35-hour system and that he had mentioned (only) a 40-hour workweek with the first 2 hours after 8 hours and the first half day on Saturday at time and a half and double time thereafter. Williams confirmed that he asked Erting why in the world he had not brought this idea up in the meeting the prior Friday, as he had given them the opportunity to talk about anything they wanted. Williams acknowledged that he told Erting he liked the idea and that, had Erting brought it up at the time, it probably would have been what they would then be doing.

According to Williams, Erting asked Williams if he minded if Erting got the employees together to see what they thought about it. Williams said that he did not know if they would go for it because they just voted this other thing in 10 to 6; but that he did not mind if Erting got the employees together to see if they would be receptive to the idea, but it had to be done after work and after employees clocked out. Williams testified, I find credibly, that he did not become aware that a petition was filed until noon on March 10. Williams at that point contacted his lawyer (not counsel of record), who told him it would be best not to change anything that was done. Erting acknowledged that he already knew that Monday that the Union was going to file a petition because he had been told so by Record on Friday. He also acknowledged that he had spoken to Record earlier about his intention to go in to speak to Williams about the workweek and overtime pay. Erting contacted everyone on Monday about having a meeting at 3:30 p.m.,[29] the following day, to discuss the matter.

On Tuesday, March 11, Erting (alone) again went in to Williams' office to tell Williams that the meeting was set up. On that occasion Williams told Erting that they were under a petition from the Union on the Labor Board to have an election to get representation. Williams told Erting that Erting could go ahead and have the meeting, but that Williams did not know at that time what could be done, or changed; he was not sure that anything could be done, and he said, "I don't think there can be." Williams told Erting not to turn the employee meeting into any kind of union rousing event or to use it to boost the Union. Erting related that Williams "damn near had him convinced," and that Erting himself may have also said he really did not think anything could be done either.

A meeting of employees after work hours was conducted to discuss alternatives to the recently instituted 35-hour workweek. Basically, the discussions covered retention of the 40-hour workweek, but to work double time in somehow. According to Erting, all but two employees preferred the 40-hour workweek and even those two said they would go along with the others to make it unanimous. Although there were only seven in attendance, others (according to Erting) had made their feelings known through relay of their position by someone present. Erting identified those actually present as being himself, Record, Slessinger, Lohbeck, and Edelman, plus others listening. (Erting acknowledged that one of those also listening was George.)

On the following morning (I find), March 12, Erting again met with Williams alone in the latter's office. Erting reported that 99 percent of the employees preferred the 40-hour workweek with double time in it some way, adding, however, that he could not be sure of everyone because it was information which came to him through other people; but that he could pretty much guarantee that was the way they felt, and that they could have a very quick vote and find out if the people preferred the 40 hours. Erting related that they again discussed being under the petition, and that Williams said that he felt there was not really a lot that he could do about it at the time. According to Erting, there was discussion about the possibility of the Union coming in. Williams had a copy of the old union contract. Somewhat led, Erting related that they talked about the pension and health and welfare provisions and that Erting stated, no matter which way the vote went, they all at Williams Litho had to work together; and that there were a lot of things in the contract that he did not like, one for sure being the 35-hour workweek, as he preferred a 40-hour workweek and felt it would be better for everyone. However, Erting, somewhat inconsistently, also said that, no matter which way the vote went, if they could keep the contract in their shop they would be better off as he felt the benefits were better. Erting testified that the last thing that Erting remembered in the conversation was that Williams said he could not do anything about the 40-hour workweek plan, but that he was receptive to the suggested plan; *and would be receptive, unless things went the other way*; with Erting assuming Williams meant the Union.[30]

Williams' version of their meeting (and other than the date of same) was that he knew that Erting had held a meeting and that only five employees had attended, since he had been downstairs on business during the period of the meeting. Williams related that Erting reported that the people who attended were receptive. However, Williams replied that he did not feel enough employees had attended, and that he told Erting that having been served with the petition he felt there was very little he could do about it. Williams categorically denied that he *ever told Erting that he might not be favorably inclined to change the hours of overtime if the* Union got in, and affirmatively testified that he has said *nothing similar*, ever.

Called as Respondent's witness, Edelman confirmed that he was present at the meeting; that the purpose of the meeting of the employees was that they wanted to change and go back to 40 hours, and to come up with a

[29] With the 35-hour workweek effective, the workday now ended at 3:30 p.m. Although Williams would place the meeting as held on Wednesday, I credit Erting that it was held on Tuesday.

[30] Erting related that many bindery units have 37.5- or 40-hour workweeks, but that he was (personally) aware of no other litho contract that did not have a 35-hour workweek. Witt testified that the contract that would be applicable to a litho shop like Williams Litho would call for a 35-hour workweek, but that there are litho shops that have a 40-hour workweek. Witt related that the International's standard 35-hour workweek is applicable in 71 percent of the shops in the U.S.A.; but that another employer in the area, Commercial Litho, has a 40-hour workweek under a first contract. However, Witt conceded that, though a trade shop, Commercial Litho was not like Williams Litho; and further admitted that the International would put pressure on Local 505 if a shop had a 40-hour workweek for an extended period.

plan that would accommodate everyone; and that his recollection was that all the employees wanted double time but with 40 hours as follows: Straight time for the first 8 hours, time and a half for the 9th and 10th hours in the day, and double time for hours thereafter and on Saturday and Sunday. However, according to Edelman, and significantly so, it really never got off the ground that well because there were not enough employees who showed up at the meeting, and it was kind of discouraging.

Lohbeck's recollection was that there was a meeting after March 7 in regard to the 40-hour workweek time and a half for the 9th and 10th hours, and double time thereafter (but he also could recall no discussion in regard to a plan for double time after 4 hours on Saturday). Even more significantly, Lohbeck related that Erting reported back to him after talking to Williams (only) *that Williams seemed favorable to the idea but he could not do anything right then.* Under all the above circumstances, I credit Williams, whom in many respects I have found to be a credible witness (also on this matter), that he did *not* tell Erting that he might not be favorably inclined to change the hours if the Union got in. Rather, I conclude and find, what the credible evidence would support is that what Erting has recalled was not what Williams said, but, at best, was a recollection of Erting's own subjective impression of a likely result.

f. *The Williams-employee meeting of March 17*

Preliminarily, it may be observed that about 2 weeks prior thereto Williams received an initial report that a nail had been placed under the tire of Becki Slessinger's car. Record related that after the union meeting of March 3 Slessinger had made inquiries of him about it on March 4. The record otherwise reveals that Slessinger did not subsequently sign a union authorization card. Though not clear when, Witt testified that Record reported back to him that Slessinger did not want any part of the Union. The record also reveals that there was a work dispute between Slessinger and Tocco on March 14. On the same day Slessinger's car received a long scratch along the back trunk lid while it was parked on Employer's unsecured back lot. On March 17, Williams called a second meeting of employees, which he described as very short.

Record testified that Williams was upset. Williams informed the employees that there had been some vandalism done on the car of an employee,[31] and he wanted it to cease; and that he wanted to know who did it, and if anyone had any information they were to let him know. Record initially testified that Williams said there would not be any passing out of union literature or meetings of two or three discussing union business on company premises *or* company time. Record's[32] recollection subsequently was that Williams said there would be no more vandalism or harassment of any kind to the employees; there would be no more gathering in small groups talking about union business; and there would be no passing out of union literature or discussion of the Union on company time or property. Erting essentially confirmed that Williams told the employees that there would be no vandalism or harassment of fellow employees, and that "[t]here shall be no handing out of union literature, or standing around talking in small groups about the Union on Company time and premises." Edelman's final version was more corroborative of Record in relating that Williams said there will be no campaigning union literature on company time or property.

Williams related that in the week prior to March 17 he had observed a lot of people standing around talking when they were supposed to be working and he had overheard some of them talking about the Union. On March 14 a second vandalism incident occurred in which a long scratch appeared on the back of Slessinger's car. On March 17 (a Monday) Williams called all of the employees together. He related it was a very short meeting. Williams asked if anyone had any knowledge of who was doing the act of vandalism, and no one said anything. Williams told the employees, "Let everyone here understand that if I catch anyone vandalizing anything here that I am going to fire them on the spot." He also said, "What's more, if I catch anyone standing around in groups and discussing union business on Company time, I am going to fire them. If I see anyone distributing union literature on Company time, I am going to fire them." Williams explained that he felt like he had to get the shop back in working order; he ended with "that is all," and he left without discussion. In this matter, being convinced that Williams was upset by the reported vandalism, I credit Record, Erting, and Edelman, whose testimony was sufficiently consistent and corroborative enough to warrant the finding now made that Williams did tell his employees essentially that there would be no more gathering in small groups talking about union business, that there would be no passing out of union literature on company time or property; and that if employees were caught or seen doing so they would be fired.[33]

g. *Other evidence*

The General Counsel established that, although not signing authorization cards, Ralph George, Allen Meschke, and David "Mel" Rainey during material times were current dues-paying members of Local 505; and in that connection introduced the International's constitution and bylaws, and the bylaws of Local 505, in regard to obligations placed on an individual by union membership. The Employer contraestablished that initiation fees and/or assessments were not discussed with employees in the meeting of March 3, and that there are certain benefits to retaining union membership; *viz*, a mortuary fund benefit, use of the union-operated referral hall, and notification of job opportunities.

[31] Slessinger was an apprentice dot etcher, a position Record conceded was difficult to find (or to fill).

[32] Record candidly acknowledged that immediately prior to March 17 employees were standing around talking during work hours (in context shown to be during actual worktime).

[33] In view of Record's categorical denial (which I credit) that Williams ever told him it was all right to talk about the Union as long as he stayed and worked at the table, and in view of Williams' own admissions in regard to discharge statements, *supra*, I do not credit Edelman's additional recollections on those subjects to the extent they suggest limitation was made of the statement found above.

In evidence also is the Employer's preelection material consisting of a letter to individual employees dated March 29, a (written) speech read to employees on April 17[34] with a copy thereafter provided to them, and a final letter dated April 25. The latter letter in part urged upon employees:

> 2. Last year, the Union tried to cripple our business by insisting that Union printers around the city not give us their work. What happened? The Union printers fought to retain their right to send us their work. They resisted the Union threats and, in the recent contract negotiations, they rewrote their contract provisions relating to Trade Practices (subcontracting) in such a way that they could be assured of their right to continue doing business with us. This was one of the major issues in the city-wide strike.

Record did not solicit a card from Rainey, who worked on the third shift, but Witt did solicit his support prior to the election, as he did with respect to Meschke, but not with respect to George, whom Witt felt to be a supervisor.

C. *Analysis, Conclusions, and Findings*

Roger Williams alone in personal interviews has heretofore hired all permanent employees for the Employer. Williams has during material times shared the authority to fire with Ross and Faust and recently he has granted broad personnel authority to Ross. However, Williams has thus far retained personal involvement even with discharge action performed by Ross, and Faust has not even sought to exercise any such authority by himself at all. Similarly, while Williams has had Faust handle corrections of employees involving minor matters of discipline, Williams, *vis-a-vis* Faust, has handled the very serious matters himself. In that background there is additionally no evidence that Dostal, George, or Meschke has ever been granted, or has ever exercised, authority to independently hire, fire, or discipline any employee.[35] The General Counsel has sought to rely on George's involvement in the hire of Tocco, and Dostal's immediate employment of Schaffner, presumably that if not actual hire, contending that such reveals supervisory authority to effectively recommend hire. In my view neither incident is sufficient for the General Counsel to prevail.

The underlying circumstance in the employment of Tocco, that George was instrumental in arranging Tocco's interview for employment, is no more dispositive of the supervisory status of George than Erting's status is similarly to be deemed affected by the latter's involvement in the initial hire of Record, and more pointedly in the subsequent employment of Schaffner. Moreover, George's inquiry of Tocco was made after a specific inquiry and request was made of him by Williams. Nor is George's involvement with Tocco's employment distinguishable by virtue of George's having also prior thereto extended to Williams his own judgment and/or evaluation as to Tocco's craftsmanship.[36] In regard to the (part-time) employment of Schaffner, given the attendant conditions and credited existing employer needs, and in light of the plausibility of a general policy of the Employer of employment of anyone reporting at the time, in my view Schaffner's immediate placement at work under such circumstances simply does not constitute grounds to conclude that supervisory status on the part of Dostal existed. It is clear that authorization for overtime on a job comes solely from Williams or Ross, and that neither Dostal nor George has ever required employees to work overtime; nor have they been shown to have been granted that authority, heretofore shown exercised and determined on this record only by Williams, Ross, and Faust. Dostal has never refused a vacation (day off) request. The resolution of the nub of the supervisory leadman controversy, it would then appear, must rest in the analysis of the nature of the involvement of Dostal, George, and Meschke in the assignment of work, and in the nature of their day-to-day direction of other employees; i.e., whether they do so responsibly and with a required use of independent judgment. However, that authority to responsibly direct other employees must be one which flows from management and tends to identify or associate the worker with management, and is to be distinguished from routine direction though from one possessing superior artisan skill, and/or experience, and whose craftsman judgment is harnessed in production procedures of the shop and in that sense relied upon by the Employer. In that sense Dostal, George, and Meschke have each been shown herein to be a true craftsman with possession of special skills and experience in the graphic arts trade generally, and in the Employer's business operations specifically.

The Employer's business and operative procedures insofar as they involve stripper, scanner, camera, and related skills were much litigated, their interrelations substantially set forth above, and need not be repeated. The salient features emerging from the above, however, are that the Employer operates a small, highly integrated shop; and that this Employer provides a craft service product to other employers who are themselves in, or knowledgeable in, the trade. The desired product in large measure is definitively ordered by such customers, has a set short-term delivery date, is generally the subject of detailed instructions by the Employer, and is finally reviewed for acceptable quality by one or more levels of admitted management, and frequently by Williams. The production schedule is daily controlled and updated by Faust.

The Employer's final product, the color separation negatives, is produced by artisans who possess variable levels of knowledge, skill, and experience in the trade and in the Employer's business. However, such assign-

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[34] Record has testified that Williams' proscriptions on March 17 in regard to discussing union matters and distributing union literature on company premises were read, which Williams has denied. Erting corroborated Record that Williams had an index card with a few notes on it. I credit Record and Erting that Williams did have notes on an index card at the time he made the statements to employees on March 17, though I am not convinced that Williams read verbatim his announcements.

[35] Neither have they been granted, or exercised, the authority to transfer, suspend, promote, lay off, recall, reward, or adjust the grievance of any employee, nor to effectively recommend any such action.

[36] Cf. *Southern Bleachery and Print Works, Inc.*, 115 NLRB 787, 790-792 (1956), enfd. 257 F.2d 235 (4th Cir. 1958).

ments as are made by Dostal are essentially routine in nature as being in accordance with an established production schedule absent other (and unusual) instruction of specific assignment to be made by admitted management. Indeed, assignment of scanner/camera work is essentially automatic by the nature of the product ordered, and is otherwise the same in accordance with the production schedule controlled and updated by Faust. Such suggestion and directions as to the way work is to be done are either in accordance with the way admitted management has instructed, or are clearly the case of the more senior and/or experienced, skilled craftsman suggesting how best to approach or to do a particular job. Though much litigated, the issue need not be belabored. I am convinced that such authority that Dostal, George, and Meschke have flows from their senior, experienced, craft position, and not with managerial power as the source. Accordingly, I am convinced, and I find, that stripper Jim Dostal and scanner operators Ralph George and Allen Meschke are not statutory supervisors, but occupy positions of senior, experienced, craft, lead personnel.[37] The additional circumstance that Meschke was recently given a supervisory title does not require a contrary conclusion in the absence of demonstrated statutory supervisory power possession, or exercise.[38]

Williams was aware that certain of his employees had attended the Union's informational meeting on March 3; and it is uncontested that, in the Employer's subsequent March 7 meeting, Williams allowed all his assembled production and maintenance employees to choose between a new workweek and overtime payment plan, which (I find) essentially is, and had been for years, the Union's established terms for a workweek and overtime payment schedule under successive union contracts, or to elect to retain their existing workweek and overtime payment plan. The choice as proposed by Williams and then voted on by his employees was between the new plan calling for a 35-hour workweek, with overtime based on payment of time and a half for the first 2 hours over 7 hours on a weekday and with double time paid for hours worked thereafter and on Saturday and Sunday, and the Employer's existing 40-hour workweek, with time and a half payment for all hours worked over 40 hours, though with the 35-cent-an-hour premium paid (journeymen) employees in lieu of paying double time. After the employees voted (10 to 6) in favor of the new workweek and overtime payment schedule, the Employer then announced to the employees that the selected new plan would be made immediately effective. I find that the new workweek and overtime payment plan schedule actually commenced the following Monday.

Accordingly, I conclude and find that on March 7, on the same day that the Union filed its petition, Respondent granted increased benefits and improved terms and conditions of employment to all its employees, which were then put into effect on Monday, March 10. The issue remains whether under the attendant circumstances the Employer has done so unlawfully, as the General Counsel contends, or lawfully, as Respondent urges. The lawfulness of the implementation, whether deemed implemented with the announcement on March 7 or with the commencement on March 10, as well as the merit of any related objection or objections, would appear to be controlled by the resolution of the issue of the legality of the initial grant and announcement.[39]

On the basis of the above circumstances the General Counsel argues directly therefrom that Williams engaged in the above conduct in order to discourage the recent union activity of employees in violation of Section 8(a)(1) of the Act. It is independently alleged and contended that in the same meeting Williams solicited employee complaints and grievances and (thereby) promised employees increased benefits and improved terms and conditions of employment in violation of Section 8(a)(1). In regard to the latter allegation, the General Counsel would appear to rely on (a) Williams' statement to the employees that, if they had any problems, the employees should resolve them with Ross; and (b) that, when employees voiced concern over prior difficulties which they had with Ross, Williams then suggested they bring problems directly to him, or elect an employee representative to present the problem to Ross or to him. (The suggestion of an employee representative or spokesman was not the subject of an independent complaint allegation.) The General Counsel has further argued that the subsequent dealings of Williams with employee Erting constituted related attempts on the part of Respondent to remedy employee grievances through an employee representative (also not the subject of an independent complaint allegation).

Respondent essentially has not disputed the facts concerning the employees' accounts of the conduct of Williams at the meeting of March 7. Rather, Respondent defends that Williams engaged in such conduct in pursuit of lawful business concerns and objectives; and contends that the General Counsel has not established in that regard that Williams engaged in such conduct with an unlawful purpose. Thus, Respondent argues that it has adequately shown that the meeting of employees was called in accordance with a prior practice of holding employee meetings which had been regular but was interrupted by the strike (and its immediate aftermath) because of the resulting hectic and unusual employment conditions. With regard to the allegation that Williams engaged in solicitation of grievances and made related promises, Respondent contends (and I find) that Williams for years *has* had a prior existing "open door" policy of which employees were individually informed at the time of hire, and which extended an open invitation to employees to freely discuss their problems and solutions di-

[37] *Print-O-Stat, Inc.*, 247 NLRB 272 (1980); *Robin American Corporation*, 245 NLRB 822 (1979); and *Southern Bleachery and Print Works, Inc.*, *supra*. See also *Kendick Engineering, Inc.*, 244 NLRB 989 (1979); *Airkaman, Incorporated*, 230 NLRB 924 (1977).

Cases relied upon by the General Counsel, *Apple Tree Chevrolet, Inc.*, 237 NLRB 867, 876 (1978); *Silvercup Bakers, a Division of Ranger Bakers, Inc.*, 222 NLRB 828, 829 (1976), and *Murray Equipment Company, Inc.*, 226 NLRB 1092 (1976), are deemed readily distinguishable, or inapposite, on their facts.

[38] Cf. *Maine Yankee Atomic Power Co.*, 239 NLRB 1216, 1218 (1979); *Trailback, Inc.*, 221 NLRB 527, 529 (1975).

[39] Cf. *West Texas Equipment Company*, 142 NLRB 1358, 1360 (1963); *Sigo Corporation*, 146 NLRB 1484, 1487 (1964).

rectly with him; and (I further find) that Williams also had discussed employee problems and problem solutions at periodic all-employee meetings that were held regularly prior to the strike. Respondent contends that the instant meeting of March 7 was called at that time because Williams knew he had production problems at the time, as well as some employee unrest over the appointment of Ross and particularly in regard to the discharge of Rapp. Thus, at the meeting, Williams explained the Company's position on Rapp's discharge, *viz*, that it *was* for poor work, and that the discharge *had* been accomplished after a prior, proper warning; and, in reconfirming the appointment of Ross and the latter's responsibilities for personnel matters, Williams made it clear that his "open door" policy for employees extended to Ross, as well as to Williams. While conceding that there was mention of an employee representative, Respondent argues that the facts show the reference originated with Ross and spontaneously followed expressions of employees of having had difficulties in employee relations with Ross. Contrary to the General Counsel's view of that remark, Respondent argues the evidence shows that, though Williams then also made reference to an employee representative, if the employees wanted one, it was a comment not only spontaneously prompted by that development, but more importantly it was not accompanied by any special urging by Williams, and thereafter it died just as quickly as it had appeared. Respondent would have it noted that it is uncontested that, in the meeting, Williams discussed other clear (solely) production matters, reminding employees of the Company's rules limiting their phone calls, and requiring the employees to punch in and out which enployees had been forgetting to do. Respondent would have it noted as well that it was not the Employer, but the employees, who had initiated the discussions of certain employer fringe benefits, and sought comparisons with similar union benefit provisions; e.g., in regard to union pension and health and welfare provisions *vis-a-vis* the Employer's profit-sharing plan and insurance coverage. (The profit-sharing plan was itself a subject matter of a recent employee newsletter which had related that the figures on the employees' shares would be in about the end of February.) The record reveals there were no promises made thereon, but rather explanations of existing benefits made to primarily new employees.

I find that there is considerable evidentiary merit, indeed I find myself persuaded thereby, to much of the above position of Respondent. While I have had some reservations in regard to Williams' even momentary embracement of the suggestion of an employee representative, I am convinced it originated with Ross and was by Williams an aside comment, accounting for divergent recollections. While Williams on this (one) occasion nonetheless picked it up, I find on the basis of the evidence considered as a whole that Williams did not press it then, nor actively pursue it later. Erting's subsequent discussions with Williams were (I find) not prefaced to Williams by any claim by Erting of being an elected employee representative. Nor did Williams recognize Erting as such, but rather clearly viewed him as but a single employee whom Williams promptly criticized because Erting theretofore had had the opportunity to speak to the subject of mutual concern (discussed *infra*) and he had not availed himself of the opportunity at the time. What quite clearly emerges from those later discussions was that Williams repeatedly told Erting, to the point of convincing Erting, that, with the intervening filing of the Union's petition, there was simply nothing that Williams could do about any employee-desired further changes in the work schedule and overtime payment plan however receptive Williams might have been to such a suggestion, if earlier made. I am convinced that it was Erting who requested the opportunity to discuss that matter further with employees and that Williams agreed prior to notice of the petition filing, and provided it was done by employees on their own time. I am not convinced, and do not find, that thereby Williams was "dealing" with Erting, a known union advocate, as an earlier suggested employee representative. As Williams clearly did have a prior "open door" policy, including a prior practice of meeting with employees, which was shown to have been reasonably interrupted by the strike, and its aftermath, and as certain legitimate, independent business reasons are shown to have arisen sufficient to warrant Williams' return to the practice of holding such a meeting at that time, I shall recommend that the complaint allegation that Williams solicited grievances and promised (related) benefits be dismissed as lacking in merit. However, there remains for consideration the independent complaint allegation that in the same meeting Respondent granted increased benefits and improved terms and conditions of employment on condition that employees withdrew support from the Union.

Respondent accurately asserts that it competes as an open shop in a predominantly unionized industry, one that requires highly skilled crafts people. Respondent argues that it consequently has heretofore offered union scale wages and benefits, or more, to attract skilled employees, though it also acknowledges that heretofore it had deviated from the Union's contract provisions in regard to the workweek and overtime schedule. Respondent would rely on certain business conditions; *viz*, that its business had mushroomed with the strike, and that resultingly there was considerable work, including the need for overtime generated during the strike, for several months, though the record reveals overtime was leveling off at this time or shortly thereafter. As earlier noted, Respondent has also acknowledged that it knew it had some employee unrest; and it is Respondent's position that Williams was also concerned that some of his skilled and competent people would leave his employ. The record reveals that Williams did tell the employees in the March 7 meeting that he did not want anyone to leave. Williams indicated to the employees that he preferred a 40-hour workweek plan, but then permitted *all* employees to choose between two plans, either essentially the Union's plan (as I have found) or to retain the current plan which he preferred. Respondent denies it did so to lure employees away from the Union. In the latter regard, the Employer would rely heavily on its contentions that Williams had no knowledge at the time of the meeting that a petition was being filed that very day by

the Union and did not learn of the actual petition filing until noon on March 10. Indeed, Respondent argues that Williams had no knowledge that there was even an ongoing union campaign, but to the contrary had been left with a distinct and (it argues) an apparently deliberately conveyed impression that the union campaign had ended on the evening of March 3 due to a lack of interest on the part of employees through certain reports of employees brought to Williams which informed Williams that he had "nothing to worry about." I do not find these arguments of Respondent persuasive.

The fact clearly is that for years, despite awareness of the Union's different workweek and overtime payment plan, Williams had operated his business on his own 40-hour workweek and overtime schedule. The newly hired (union) employees had sought and accepted permanent employment with the Employer knowing full well of those existing terms and conditions of employment. The employees had recently indicated displeasure over what they perceived was an unfair discharge of Rapp, and had exhibited discontent with Ross on certain problemsome matters, and Williams addressed those matters. However, I also have no doubt that some employees had significant concern at the time about the amount of overtime that they were working, and the pay that they were receiving therefor, and I credit Record that it was a matter of major interest at the time. However, there is no evidence in this record that any employee had indicated theretofore an intent to leave Williams Litho on that account. There was no hint of such shown in Dostal's or Edelman's report to Williams. The Union had not in any sense served formal notice on the Employer that it had lost interest in organizing Respondent's employees, or that its organizing campaign would be held in abeyance; and Williams did not inquire of Witt though he had known Witt for 10 years. Moreover, the reports of Dostal and Edelman about the status of the employees' organizational efforts did not operate to suspend the protection of the statute afforded to union organizational efforts of employees, indeed particularly at a time of initiation of such efforts, when most vulnerable to employer interference. I am further fully convinced that the message given Dostal by Record, a staunch union advocate, was not the notice of surrender of the Union's organizational efforts that Dostal sought to portray, but what was imparted to Dostal by Record, for whatever reason, was that they might have to wait for further organizational development before petitioning. In contrast, the reports to Williams from Dostal and Edelman were from two former nonunion employees, only one of which had attended the meeting and signed a union card, the other having declined interest in the Union at the time. Thus, I rather conclude and find that Williams could not reasonably rely on their reports as the last word, and furthermore reasonably did have something still to worry about, that very possible development which turned out to be the actual case sooner than perhaps he imagined; *viz*, that the initial organizational efforts would be likely to be continued by strong union advocates such as Record. The point need not be belabored for, even if Williams simply miscalculated as to employee interests, his conduct in this aspect would tend to interfere with employees' Section 7 rights. Cf. *American Freightways Co., Inc.*, 124 NLRB 146 (1959). The lack of convincing business justification only the more effectively convinces that Respondent's proffer at this juncture of a choice to its employees of their adoption of essentially the Union's 35-hour workweek and overtime schedule with certain double time provisions over the Employer's preferred existing plan, and immediate grant of same on their selection, being union wages, terms, and conditions of employment previously withheld from the employees but a matter of significant interest to employees at the time of their initial organizational efforts—is thereby revealed to be an action reasonably calculated under the above circumstances to weaken or forestall, if not eliminate, any vestige of the embryonic organizational effort that was existent and might reasonably be expected to continue, and thus an interference with the Section 7 rights of employees in violation of Section 8(a)(1) of the Act. Williams may have been misled to miscalculate when a petition would be filed, but I am convinced he had not been misled to reasonably conclude that all his employees had given up their interest in organizing a union, but rather opportunely reacted to ensure that result on receiving reports suggestive of the fact that the movement might be faltering. I further conclude and find that the announced grant of said increased benefits and improved working conditions, whether construed as implemented with the benefit announcement on March 7 or subsequently implemented with the benefit commencement on Monday, March 10, was also violative of Section 8(a)(1) of the Act. *N.L.R.B.* v. *Exchange Parts Co.*, 375 U.S. 405 (1964); *Raley's, Inc.*, 236 NLRB 971 (1978).[40]

Inasmuch as I have also heretofore found the General Counsel's offered evidence unpersuasive, but rather have been convinced and found that Williams did *not* tell Erting in regard to Erting's suggested alternative plan that he might not be favorably inclined to such change *if the Union got in, nor anything similar*, e.g., *unless things went the other way*, I shall recommend that the allegation of the complaint that Williams on March 12 conditioned the granting of promised benefits on employees' withdrawing support from the Union be dismissed.

[40] It seems to me to be clear that it can be no answer to the observed interference with organizational rights for the Employer to argue, even meritoriously, that it was not motivated by a (specific) desire to influence the election results, with the Union's filing of the petition that day being unknown by Williams and the union organizational efforts reported as stalled. Moreover, cases on which Respondent urged reliance, such as *Connor Trading Company, Inc.*, 188 NLRB 263 (1971), *Poultry Packers, Inc.*, 237 NLRB 250 (1978), and similar cases such as those involving the appearance of a formal union withdrawal, or a significant lapse of time with intervening clear business considerations arising that were addressed, also appear to be inapposite on their facts and/or otherwise readily distinguishable. In leaving its paramount asserted business concern over the prospect of skilled craftsmen quitting essentially but an assertion, the Employer has not established facts sufficient to justify its action which otherwise clearly interfered with the organizational rights of its employees, and thus, in turn, has not shown sufficient justification to warrant application of the Board's approved holding in *Walnut Creek Psychiatric Hospital d/b/a Walnut Creek Hospital*, 208 NLRB 656, 663 (1974), as urged by the Employer. In view of the timing of the grant, the failure to show business necessity, and the law to be applied, Respondent's mere assertion cannot prevail. *Tak-form Products Company, a Division of Bliss & Laughlin Industries*, 229 NLRB 733, 742 (1977).

Inasmuch as I have heretofore found that on March 17 Williams, while still upset over reports of recent, serious, suspected vandalism of an employee's car, did tell his employees in substance and effect that there would be no more gathering in small groups talking about union business, and no passing out of union literature on company time and/or property, with a contemporaneous threat of discharge for violation, I further conclude and find that thereby Respondent has orally promulgated an overly broad no-solicitation and no-distribution rule in violation of Section 8(a)(1) of the Act.[41] However, inasmuch as it was conceded by the General Counsel's witness Record that there had been considerable standing around by employees in the prior week with employees admittedly engaging in union discussions during worktime, I do not find that the rule was discriminatorily promulgated, as also seemingly argued by the General Counsel, but rather find that it was warranted by business conditions, though, as promulgated, it was overly broad and thus unlawful.

III. THE OBJECTIONS IN CASE 14-RC-9124

In view of my findings above, I further conclude and find that the Union's Objection 14 (alleging that the Company promised the employees better benefits if Local 505 lost the election—to the extent it encompasses alleged conduct on March 12), Objection 16 (alleging that the Company solicited employee grievances), and its objection relating to "Other Conduct Not Specifically Alleged in the Objections" are all without merit, saving only as to Objection 14 to the extent hereinafter noted, and I shall recommend that they be overruled. However, in view of the above findings that Williams' no-solicitation/no-distribution rule as promulgated on March 17 was unlawfully broad, and was accompanied by a threat of discharge for violation, all in violation of Section 8(a)(1) of the Act, I find that the Union's Objections 1 and 2 are meritorious, and I shall recommend that they be sustained. Inasmuch as I have further found that the grant of increased benefits and improved working conditions and the implementation of same on March 7 and/or 10 were unlawful, I further conclude and find that there is merit to that extent in the Union's Objection 3 (alleging that certain preexisting benefits were discontinued), in the Union's Objection 14 (alleging that the Employer promised employees better benefits), but not in Objection 9 (alleging that the Employer could not put certain improvements into effect).

Accordingly, I find that there is merit to the Union's Objections 1-3 and 14, and I shall recommend that they also be sustained in those limited respects. Accordingly, I shall recommend that the election heretofore conducted in Case 14-RC-9124 be set aside.[42]

[41] Cf. *Essex International, Inc.*, 211 NLRB 749 (1974); *Paccco, a Division of Fruehauf Corporation*, 237 NLRB 399, 401 (1978).

[42] *West Texas Equipment*, *supra*; *The Ideal Electric and Manufacturing Company*, 134 NLRB 1275 (1961).

CONCLUSIONS OF LAW

1. Williams Litho Service, Inc., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Graphic Arts International Union, Local 505, AFL-CIO-CLC, is a labor organization within the meaning of Section 2(5) of the Act.

3. In regard to Case 14-CA-13782:

a. By offering a choice on March 7, 1980, to all its employees to elect a workweek and overtime payment schedule which was essentially that provided to other employees under union contract, and by thereafter granting and implementing the employees' selection of the said 35-hour workweek with certain double time payment provisions for overtime worked, in place of the Employer's theretofore existing 40-hour workweek and its time-and-a-half overtime payment schedule with a 35-cent hourly premium paid to journeymen in lieu of any double time payment, Respondent has granted all its employees increased benefits and improved the terms and conditions of employment of all its employees in circumstances reasonably calculated to interfere with the recent union organizational efforts of its employees in violation of Section 8(a)(1) of the Act.

b. By orally promulgating on March 17, 1980, an overly broad and thus unlawful no-solicitation and no-distribution rule with a contemporaneous threat of discharge for violation thereof, Respondent has interfered with the Section 7 rights of its employees in violation of Section 8(a)(1) of the Act.

4. Respondent has not otherwise engaged in conduct violative of the Act.

5. In regard to Case 14-RC-9124:

a. By virtue of, and to the extent of the conduct found unlawful in Conclusions of Law 3a and 3b above, there is merit found in the Union's Objections 1, 2, 3, and 14 to the election conducted in Case 14-RC-9124.

b. The Union's objections as otherwise contained in Objections 9, 14, 16, and the "Other Conduct Not Specifically Alleged in the Objections" are without merit.

THE REMEDY

There remains but to consider the General Counsel's additional complaint allegation regarding the remedy sought herein, *viz*, that Respondent's unfair labor practices are so serious and substantial in character and effect as to warrant the entry of a remedial order by the Board requiring Respondent as of "March 5th" (sic) to recognize and bargain with the Union. It has been contracontended by Respondent that the drastic remedy of a bargaining order is simply not warranted in this case.

First the General Counsel has contended that, even if it be determined that there has been no showing of designation of the Union as collective-bargaining representative by a majority of the employees, a remedial order is nonetheless warranted, arguing that the Employer's unfair labor practice conduct was "outrageous" and "pervasive," and seeking to rely in that regard on the Board's holding in *United Dairy Farmers Cooperative Association*, 242 NLRB 1026 (1979). However, contrary to the General Counsel's urgings in the latter regard, I con-

clude and find that Respondent's conduct hereinabove found unlawful does not appear to have been such as would warrant imposition of a remedial bargaining order in the absence of a convincing evidentiary demonstration of designation of the Union as collective-bargaining representative by a majority of the employees in the unit for reasons clearly expressed by the Board in declining to issue a remedial bargaining order in *United Dairy Farmers Cooperative Association, supra*. See also *Sambo's Restaurant, Inc.*, 247 NLRB 777 (1980).

Secondly, the General Counsel, on brief, has continued to urge the appropriateness of entry of a remedial bargaining order on the basis that the Employer has otherwise engaged in pervasive conduct which had a "tendency to undermine majority strength." I conclude and find that warrant for such a remedial bargaining order would appear presented herein on the basis of "less pervasive practices which nonetheless still have the tendency to undermine majority strength and impede the election processes." *N.L.R.B.* v. *Gissel Packing Co., Inc.*, 395 U.S. 575, 614 (1969). The General Counsel's contended position would appear in conduct heretofore evaluated by the Board as of a nature having a lingering effect, such that traditional remedies have been deemed unlikely, or less likely, to insure a fair or free rerun election, *where* the Board was persuaded that a record of valid, unambiguous cards executed by a majority of the employees in the unit are present, and represent a more reliable measure of employee desire on the issue of their representation. *Raley's, Inc., supra; Eagle Material Handling of New Jersey*, 224 NLRB 1529, 1533 (1976); *C & G Electric, Inc.*, 180 NLRB 427 (1969). But see and compare *Walgreen Company*, 221 NLRB 1096 (1975), relied on by Respondent, which would, however, appear distinguishable.[43] Respondent's additional reliance on *WCAR, Inc.*, 203 NLRB 1235 (1973), would appear to be placed on a case even more readily distinguishable.[44] In passing, I would observe that, even if I am in error, and the General Counsel's earlier position were deemed to be the one to prevail, e.g., that Williams' even one-time utterance in regard to a receptivity to his employees' selection of an employee representative, or spokesman, had an unwanted effect on employees in that it reasonably would be (or was) taken by them to be a viable offering, and thus constituted an interference with an exercise of their Section 7 rights, such incident would appear as one not to bear significantly on the issue of a required bargaining order. Cf. *The May Department Stores Company d/b/a The M. O'Neil Company*, 211 NLRB 150, 151 (1974).

With findings herein made that Dostal, George, and Meschke were not established to be supervisors, but rather were shown to appear to be senior, experienced craft leadmen, there were resultingly 16 employees in the appropriate unit, only 8 of which the General Counsel has established had previously executed valid union authorization cards specifically designating Local 505 as their collective-bargaining representative respecting wages, hours, and other terms and conditions of employment. It follows that the Union had not attained, at any material time herein, to a majority collective-bargaining representative status based on a valid authorization *card* designation.

With forethought to perceive the potential for such a result, the General Counsel has alternatively argued that authorization cards are not the sole serviceable basis for Board reliance that the Union at some material point of time was shown to have actually occupied a collective-bargaining representative status for the majority of the Employer's employees. The General Counsel has established by documentary evidence, stipulation, and/or credible testimony that employees George, Meschke, and Rainey (all scanners) were each members of Local 505 previous to their employment with Williams Litho; and that they were dues-paying members who had paid up their dues through material times.[45] The General Counsel has constructed detailed arguments based on the stated objectives and organizational commitment as contained in the "Constitution and Laws" of the International and in the "By-Laws" of Local 505, as well as on membership obligations therein, particularly in regard to the (general) maintaining of contractual relations with employers. Based on same the General Counsel has essentially argued that, even absent executed authorization cards by members George, Meschke, and Rainey, these three employees by continuance of their membership have effectively demonstrated they have designated the Union as their collective-bargaining agent with Respondent.[46]

[43] In the *Walgreen* case, *supra*, a wage increase previously granted 4 months earlier and put in effect at other stores was deemed unlawfully granted 3 days after organization commenced. In concluding such 8(a)(1) conduct considered alone or in conjunction with other unfair labor practices found was *not* irremedial, and in concluding that a bargaining order was thus *not* warranted, the Board observed that, though the raise was unlawfully granted (as found by the Administrative Law Judge, the timing of the grant was to lessen union support), it was not tied (apparently in origin) to the union's organizing campaign, it had been granted to employees at other stores earlier, and it thus did no more than bring those employees (being organized) up to the prevailing rate; and this was so explained to the employees. None of these factors would appear present herein.

[44] Thus, in *WCAR, Inc.*, although the case involved an overtime payment, the case presentment was one of an unlawfully advanced payment of sums previously earned and due, and thus it involved a one-time overtime payment; whereas the instant matter clearly involves a permanent change made in the workweek schedule and a continuously operating overtime payment plan. The cases of *Naum Brothers, Inc.*, 240 NLRB 311 (1979), relied on by the General Counsel, and *New Alaska Development Corp., Alaska Housing Corporation*, 194 NLRB 830 (1972), relied on by Respondent, would both appear readily inapposite on their essential facts. In passing, I would additionally note that in *New Alaska, supra*, there is an indication that the likelihood that illegal conduct will reoccur may have been a factor considered by the Board. In that connection, I conclude and find that the instant record before me does not present the appearance of a respondent with any heretofore demonstrated propensity to violate the Act.

[45] Also introduced were applications by Rainey for membership in the Graphic Arts International Union (herein the International) and in Local 505. Neither document speaks specifically to authorizing the Union to represent the applicant in collective bargaining in regard to wages, hours, and working conditions; but the applicant, on approval by the International, apparently becomes eligible for that Union's mortuary fund benefit, which appears to call for a maximum benefit of $1,350.

[46] On brief, the General Counsel would have the instant situation also likened to the situation where payment of dues by a majority of current employees may be utilized to demonstrate a continued majority of a union. *Reuben R. Miller, and Reuben R. Miller and Phillip L. Miller,*

Continued

The Employer responds there is no case support to be found for the General Counsel's advanced theory that mere union membership impliedly expresses an intent on the part of the member that the Union is to (continuously) serve as that individual's bargaining agent at all times and at every place of employment; and Respondent argues such should particularly not be the case herein where the initial act of joining the Union does not require such an intent and where continued membership may be explained by benefits other than representation in the collective-bargaining process,[47] where the initial membership itself may be otherwise explained, and where member-employees may have otherwise indicated their present lack of interest in representation by the Union *vis-a-vis* their employment relationship with their present employer, as herein. The General Counsel would appear to concede that an otherwise indicated designation might not be applicable where a union member is shown to have specifically refused to execute a card, was an "outspoken opponent of the Union," or had delivered an "impassioned" antiunion speech (*WCAR, Inc., supra* at 1248) but argues for same otherwise. It is to be noted that in the *WCAR, Inc.*, case, *supra*, the basic authorizations were included in the employees' membership application forms and were unrevoked.

Respondent, in turn, has conceded that George, Meschke, and Rainey were union members who prior to employment with the Employer had worked at Local 505 shops, but points out accurately that the Union's citywide contract has had, and continues to have, union-shop and dues-checkoff provisions. The Employer additionally would have it observed that all these employees were informed of the Union's organizational campaign at the Employer and of the March 3 union informational meeting, but none of the three attended. Respondent also affirmatively argues that not one of them has signed an authorization card, or otherwise expressed a current desire to designate the Union as their collective-bargaining representative with the Employer.[48] the General Counsel contracontends that the Employer has not shown the latter in that it failed to call George, Meschke, or Rainey to establish it, and that the record is barren as to whether they ever actually refused to sign an authorization card. The General Counsel notes as to George (only) that George was viewed as a supervisor by the Union, and that his support was not even solicited at the time. The General Counsel further argues that the Union's approach of George and Meschke, being subsequent to the unlawful conduct of Respondent on March 7, will not permit the drawing of an adverse inference of revocation of union designation arising from the failure of the Union to produce an authorization card from these individuals.[49]

I am persuaded that there is Board precedent that a showing of designation of the Union as collective-bargaining representative is not required to be by card designation alone. The Act requires no specific form for the grant of authority to bargain; and "It is only necessary that it be manifested in some manner capable of proof, whether by behavior or language." *Sema Corporation, d/b/a Shenandoah Golf and Country Club, Inc.*, 185 NLRB 455, 458 (1970). In urging that the Board rejected therein an employer's attempt to establish the union's majority support on the basis of union membership, the Employer herein would appear to rely on language addressed in the analysis to arguments based on the import of argued staffing made through a referral hall.[50] However, it would appear that the Administrative Law Judge's findings therein reveal that, while past memberships not shown current, or interrupted, were not counted as designations, the finding made as to one employee who had paid dues to the union but for whom the union had not presented a card designation *was* to be counted, though it may fairly be observed that in the light of other findings the latter was not of controlling significance. *Id.* at 457, 458. Respondent has also argued that mere membership cannot be equated with "clearly manifested" intent to authorize the Union as collective-bargaining agent, seeking to rely on *WCAR, Inc., supra*. However, Respondent's reliance therein[51] would appear to fail to take into account that the case cited in support was the *Shenandoah Golf* case, *supra*; and further that in *WCAR, Inc., supra*, not only was the origin of membership effected by a background of union-security provisions while employed

Trustees of Morris Miller, d/b/a Sioux City Bottling Works, 156 NLRB 379, 384 (1965). However, that case is readily distinguishable in that there was therein a majority representative already duly chosen. See *WCAR, Inc., supra* at 1248, fn. 21.

[47] The Employer here points to: (a) the Union's operation of a referral hall; (b) its job service afforded members the on inquiry of the member, or the Union's own initiated notice to members in regard to available job opportunities with some 65 companies operative in the area and under contract with the Union; and (c) the aforesaid mortuary fund benefit, and other intangible benefits, citing social events and peer acceptance.

[48] The Employer showed that on March 3 Record was instructed by Witt to solicit a card from Rainey. However, Record testified without contradiction that he did not solicit a card from Rainey as he did from Schaffner. (The authorization card was readily delivered to Schaffner, a second-shift employee, executed by him, and promptly retrieved.) Respondent obtained admissions from Witt that, on a later occasion when Witt spoke to George, George told Witt essentially that it was a shame the Union was trying to organize such a wonderful place. I do not find any concession in the record by Witt that, on his (election) approach of Meschke, Meschke was noncommittal. In any event, the George and Meschke remarks to Witt were clearly made well after the March 7 grant of substantial benefits.

[49] Presumably for similar reasoning, the General Counsel has not sought to advance argument herein for a majority showing that would be based on the available card designations and the challenged ballot of George. (Other ballots challenged were those of Dostal and Kirby.) See and compare *Pinter Bros., Inc.*, 227 NLRB 921 (1977). In any event, in view of findings hereinafter made I need not address the question of warrant herein to reach, or to resolve, such an issue.

[50] Noted by the Employer was:

> [W]hatever a person's attitude regarding union representation may have been prior to his hire by the Company, it does not necessarily follow that it remained the same thereafter. Even had it happened that a majority of the employees hired by the Company had at some earlier times been members of the unions, in the absence of any evidence that their desires for representation continued unchanged, an inference to such effect cannot validly be drawn. [*Id.* at 458.]

[51] The reliance made was on the statement by the Administrative Law Judge therein that:

> Against the background of the union-security provisions, a card designating the Union to represent the signer in any and all matters within the radio, television and related industries, embracing the Union's entire jurisdiction, would not necessarily or even probably indicate a desire on the part of the signer to bring the Union into the nonunion station by which he is currently employed. [*Id.* at 1248.]

elsewhere, but continuance of membership could be explained by the desire to continue to do freelance work for 120–160 producers under union agreements with union-security provisions. The same alternative explanation for continued membership was then reinforced by other evidence of the employees' disaffection with the union as their representative *vis-a-vis* their present employer, *viz*, the repeated refusal of one to sign an authorization card for the union; the circumstance that a second employee had delivered an "impassioned" antiunion speech; and that the third was identified by the union in formal objections as an "outspoken opponent of the Union." Before completing analysis of Respondent's arguments made in such vein, I shall look more closely at the General Counsel's showing made in regard to the designation by George, Meschke, and Rainey of the Union as being their collective-bargaining representative with their present nonunion Employer by virtue of their status as dues-paying members of Local 505.

Analysis of the International's "Constitution and Laws" and of the "By-laws" of Local 505, introduced in evidence by the General Counsel, reveals as to the International's charter in part: a general purpose "to accomplish the organization of all workers within its authority" (preamble); the fact that membership in the International is derived from membership in the Local (pt. I, art. XIX, sec. 19.1, p. 13); limitations (operative on George, Meschke, and Rainey) on withdrawal and resignation (secs. 19.8 and 19.9, p. 14); a declaration in regard to powers and jurisdiction of the Local that it "constitutes a geographic or other unit of membership of the International, deriving its charter, jurisdiction and powers from the International"; and a declaration that "[t]he Local shall be the exclusive representative of each member for purposes of collective bargaining and the execution of collective bargaining agreements and as such representative is authorized by each member to handle, settle or dismiss all grievances of each member relating to his employment" (pt. II, ch. 1.1, p. 26). The Local's "Bylaws" pertinently provide for a standing organizing committee which "shall establish and maintain a current roster of unorganized workers and shop[s] and shall strive ceaselessly to organize all appropriate Graphic Arts workers into the Union" (art. X, sec. 10.1(c), p. 9). Finally, both the International and the Local require an oath (or affirmation) of membership, as a *condition* of membership, which provides, *inter alia* that the member "will, to the utmost of my abilities, faithfully discharge the duties and obligations pertaining to membership in the Graphic Arts International Union and of the Local in which I enter upon membership; that I will take an affirmative part in the business and activities of the organization . . . that I will support the officers in the performance of their duties." I am fully satisfied from the above that the General Counsel has made out a *prima facie* showing of a member's designation of the Local Union as his collective-bargaining representative by entry and maintenance of membership in the International and/or in the Local. The General Counsel has also established by pertinent financial records: *in regard to George* that George has been a dues-paying member since 1966, and had paid dues on March 3 effecting currency through February, on April 1 was current through March, on May 1 was current through April, and on May 23 became fully current for May; *in regard to Meschke* that Meschke had been a dues-paying member since 1960, and on March 3 was current through March, on April 1 was current through April, on May 1 was current through May, on May 28 was current through June, and on June 20 was current through July; and *in regard to Rainey* that Rainey had been a dues-paying member from 1973, and on December 4, 1979, was current through November 1979, on (it appears) January 4 was current through January, on March 19 was current through March, and on May 19 was current through April. I am thus fully persuaded and I find that the General Counsel has established that all three were essentially current dues-paying members of Local 505 during all material times herein. I am further persuaded and I find that the General Counsel has made out a *prima facie* case that George, Meschke, and Rainey had authorized Local 505 to act as their collective-bargaining representative with their current Employer by virtue of their prior acceptance of membership obligations and subsequent maintenance of status as current dues-paying members during all material times herein absent a clear contrary showing. I now address Respondent's rebutting arguments to that effect.

George's statement to Witt, wholly apart from other argument advanced by the General Counsel, at best indicates a personal disappointment with the Union's intent to organize the Employer. It certainly does not constitute a clear disaffection with the Union or its stated purpose, nor a revocation of the Union's designated authority, particularly in the face of continued membership. Witt's approach of Meschke for support is not shown to have produced disaffection. Meschke is not shown either to have been asked to sign a card, or to have refused to sign a card or to give support; and it is clear that he also thereafter has continued with regularity and currency as a dues-paying member. Respondent's only showing as to Rainey appears to be that he was an alleged victim of a third incident of unidentified vandalism. This incident was related as occurring in late March and was clearly after both March 7 and 17. Rainey did not testify. However, on March 19, Rainey paid Local 505 dues and was then current through March.

I conclude and find that Respondent has not sufficiently rebutted the existence of the authority of the Union to bargain on the behalf of George, Meschke, and Rainey during material times herein by virtue of their contemporaneous behavior and/or statements.[52] Respondent's final arguments relate to the existence of alternative benefits as a possible explanation for a continuance of membership by these employees. The problem with that advanced position's prevailing is that it does not by itself necessarily exclude the clearly expressed acceptance of the Local, or itself diminish the accepted obligation to the Local in regard to collective-bargaining representa-

[52] Nor will I speculate that George, Meschke, and Rainey have all never read the International's "Constitution and Bylaws" or the Local's "Bylaws" in view of their evidenced years of membership, receipt of the Local's "Bylaws," and the expressed ready availability of the International's "Constitution and General Laws" (sic) to all local union members.

tive status, which is carried along with continued membership. In *WCAR, Inc., supra*, not only did members actually engage in activity with other companies (freelance) for which continued membership was a requirement and thus could be explained, they *also* engaged in conduct clearly indicative that they affirmatively did *not* want the Union to represent them with their current employer. In contrast herein, it is observed in that regard that member-employees George, Meschke, and Rainey have not been shown to have disaffected from the Union, but rather elected to continue their membership freely (e.g., not as a result of any applicable union-security or dues-checkoff contractual requirement, nor *solely* for other union membership advantage that is reasonably demonstrated); and did so in a Local that is constitutionally constituted to serve as the exclusive collective-bargaining representative of all its members *vis-a-vis* their individual employers, and with the mutually expressed purpose and/or obligation of the International, the Local, and the member to affirmatively pursue such very bargaining status in unorganized employer conditions. The same is thus reasonably to be ascribed to member-employees George, Meschke, and Rainey as to their own intended purpose and design, in the absence of clear contra-indicating circumstances (deemed not shown herein), by virtue of their conduct in a voluntary continuance of membership in that labor organization, as effectively and reliably, so it would seem, as the execution of authorization cards designating Local 505 as their exclusive collective-bargaining representative during the same material times herein would appear to have done so. I am persuaded that the General Counsel has established the Union's majority representative status by a combination of alternative means on which the Board may reasonably rely; *viz* 8 valid single-purpose Local 505 authorization cards and the circumstance of 3 additional employees who have maintained Local 505 representative membership during material periods herein, a total of 11 in a unit of 16, a clear majority. As existing Board precedent, otherwise controlling on me, appears to clearly call for the remedial bargaining order sought herein (*Keystone Pretzel Bakery, Inc.*, 256 NLRB 334, (1981), cases cited earlier) the remedial bargaining order will be accordingly recommended hereinafter, effective as of March 7, 1980. It will be accordingly recommended that the petition in Case 14-RC-9124 be dismissed.

SUPPLEMENTAL CONCLUSIONS OF LAW

6. All production and maintenance employees employed by the Employer at its Brentwood, Missouri, facility, excluding office clerical and professional employees, guards and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

7. Since at least March 6, the Union has been, and is now, the exclusive representative of all employees in the above appropriate unit within the meaning of Section 9(a) of the Act.

8. By its conduct in engaging in the unfair labor practices related earlier in Conclusions of Law 3a and 3b, above, Respondent has engaged in conduct which reasonably viewed has a tendency to undermine the majority strength of the Union and to impede the election processes; and a remedial bargaining order is warranted herein under all the circumstances to be effective March 7, 1980, particularly in view of the likely lingering effect of Respondent's grant and implementation of increased benefits and improved terms and conditions of employment on a subject of major interest to employees which tracked union contract provisions.

REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I find it necessary to order Respondent to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

[Recommended Order omitted from publication.]